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avricos, LLP

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OFFICE OF THE ATTORNEY GENERAL
OFFICE OF COUNSEL
CHRISTOPHER CHRISTOFFERSON

WILLIAM C. PERRIN, JR. 1947-1997

**COUNSELLORS AT LAW
370 MAIN STREET
WORCESTER, MASSACHUSETTS 01608
TELEPHONE (508) 792-2800
FAX (508) 792-6224**

WILLIAM C. PERRIN, JR. 1947-1997

Via USPS Express Mail

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SURFACE
TRANSPORTATION BOARD

Dear Ms. Brown:

I am also enclosing an extra copy of the first page of the Petition which I would ask you to date stamp and return to me in the enclosed self-addressed stamped envelope. Thank you for your assistance. If you need anything further, please do not hesitate to contact me.

Very truly yours,

David A. Wojcik

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35356

ABC&D RECYCLING, INC. -
LEASE AND OPERATION EXEMPTION OF A LINE
OF RAILROAD IN WARE, MASSACHUSETTS

TOWN OF WARE'S VERIFIED PETITION
TO REJECT and/or DISMISS VERIFIED NOTICE
OF EXEMPTION AND REQUEST FOR STAY
OF EFFECTIVE DATE OF EXEMPTION

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**SURFACE
TRANSPORTATION BOARD**

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Submitted by:

David A. Wojcik, Esq.
John A. Mavricos, Esq.
Nicole B. Caprioli, Esq.
Christopher, Hays, Wojcik & Mavricos, LLP
370 Main Street
Worcester, MA 01608
508-792-2800
dwojcik@chwmlaw.com

Counsel for Town of Ware

FILED

MAR 19 2010

**SURFACE
TRANSPORTATION BOARD**

I. INTRODUCTION

Petitioner, Town of Ware ("Ware"), respectfully requests that the Surface Transportation Board ("STB") reject and/or dismiss the "Verified Notice of Exemption for Lease and Operation of a Rail Line Pursuant to 49 USC 10901 and 49 CFR 1150.31" ("Notice") sought by ABC&D Recycling, Inc. ("ABC&D") and to enter a stay of the effective date of the exemption pending ruling on this petition.¹

II. SUMMARY OF THE PETITION

ABC&D's true motivation in submitting this Notice is not to be a common carrier but rather to obtain the protection of federal preemption for an intended municipal solid waste ("MSW") facility which state law and local authorities have already prevented it from doing. By using the exemption process created for noncontroversial proceedings ABC&D attempts to avoid disclosing those facts which make clear its true intent. Consequently, ABC&D's submission is false and misleading and should be rejected as void *ab initio* or dismissed as a sham transaction. As set forth in greater detail hereinafter, ABC&D has failed to disclose to this Board that:

- throughout its corporate history, ABC&D has never engaged in common carriage.
- contrary to the implication of ABC&D's verified assertion that "if it wishes to handle solid waste in the future it must....", ABC&D has already applied for, been denied and is presently appealing Ware's rejection of its application to handle MSW.
- ABC&D's only chance of obtaining permission to operate the MSW disposal facility it has publicly stated it desires to operate, is to cloak itself with the mantle of federal preemption and thereby attempt to do an end run around those regulators who have already ruled that ABC&D's planned MSW facility constitutes a threat to the public

¹See Northeast Interchange Railway, LLC, STB Docket No. 34735 (November 17, 2005) (STB entered a housekeeping stay of exemption wherein exemption would not become effective until further order of the Board); City of Alameda, STB Docket No. 34798 (December 15, 2005) (a housekeeping stay of the effective date of the exemption is appropriate to allow time for the Board to consider the issues presented).

health and safety of the citizens of the Town of Ware.

III. RELEVANT HISTORY

1. Development of ABC&D's C&D Business

Development of the ABC&D facility in Ware commenced in July, 2001 when the O'Riley Family Trust² ("Trust") filed an application with the Ware Planning Board for a Special Permit allowing it to expand its existing business (an auto recycling yard) to include a railroad siding³ and processing areas for transfer and recycling of asphalt, brick, concrete, construction and demolition materials, and wood. ("C&D" facility) (See *Exhibit 1*, a true and accurate copy of the Special Permit approval). Public hearings were duly held and the Special Permit was granted. (See *Exhibit 1*). As part of that permitting process, the Trust applied for and received permission from the Ware Planning Board to construct a railroad siding or spur line to provide rail access to the proposed C&D facility. (See *Exhibits 1 and 5*). This railroad siding or spur line was constructed solely for ABC&D's private use and was never intended to be used for common carriage. (See *Exhibit and 5*).

Furthermore, hearings were held on the Trust's Request for Site Plan Approval for the project and Site Plan Approval was granted by the Ware Planning Board. (See *Exhibit 2*, a certified copy of the Site Plan approval). The proposed facility operator was ABC&D. (See *Exhibit 3* [decision pg. 2], a certified copy of the Hampshire Superior Court docket, decision and Notice of Appeal) .

²The Trustees of the O'Riley Family Trust are Richard O'Riley, Joan O'Riley, Sean O'Riley and Colleen O'Riley Mucha. Richard O'Riley, Joan O'Riley and Sean O'Riley are also the Directors and Officers of ABC&D. (See *Exhibit 4*, a true and accurate copy of the Declaration of Trust recorded in the Hampshire County Registry of Deeds on June 4, 1996 in Book 4900, Page 109 and Trustee's Certification to same, recorded in the Hampshire County Registry of Deeds on November 16, 2004 in Book 8066, Page 30).

³The rail siding was to be constructed for the sole purpose of servicing the proposed C&D facility to be constructed. (See *Exhibit 5* for a true and accurate copy of a plan submitted by ABC&D with its Site Approval Application).

ABC&D's Articles of Incorporation state that the purpose of ABC&D is to "operate a Construction [sic] demolition recycling facility" and "any other business in connection with the foregoing...". (See *Exhibit 6*, a certified copy of the Articles of Incorporation). This stated purpose has never been amended. Pursuant to its stated purpose, ABC&D proceeded under Massachusetts General Laws, Ch. 111, §150A to obtain site plan approval for the proposed C&D facility from the Massachusetts Department of Environmental Protection ("DEP") and from the Town of Ware Board of Health. ("BOH") (See *Exhibit 3*, decision, page 2). ABC&D voluntarily proceeded under relevant State and Local law and constructed the C&D facility pursuant to State and Local permits.

On or about December 14, 2004, ABC&D commenced construction on a 26.78 acre piece of land at 198 East Street, Ware, Massachusetts, of a building to accommodate its C&D waste handling business. The building consisted of approximately 22,000 square feet with areas for crushing, sorting and otherwise processing or handling the C&D waste which it was expecting. (See *Exhibit 7*, a true and accurate copy of the building permit and certificate of occupancy). Construction was completed on or about January 11, 2006 and ABC&D opened its C&D handling facility in February 2006. (See *Exhibit 7*).

Consistent with its Articles of Incorporation, ABC&D was (and is) in the business of charging per ton fees for C&D material which then became the property of ABC&D. Once customers delivered C&D materials to ABC&D, it then "processed" the materials by crushing, separation, etc. and then either re-sold or shipped the materials out by truck or rail for disposal. At no time during the last eight years (of permitting, construction and operation) of C&D operations has ABC&D ever held itself out as a common carrier, or provided any common carrier services. (See *Exhibit 6*).

2. Attempt to Expand C&D Business to Include MSW

ABC&D's Notice of Exemption failed to disclose to the STB that in August of 2007, ABC&D applied, pursuant to Massachusetts General Laws Ch. 111, §150A, to the Massachusetts DEP for Site Assignment Approval to handle MSW at its C&D facility. (See *Exhibit 8*, a true and accurate copy of the DEP filing). The Massachusetts DEP allowed the site suitability application on or about December 10, 2007. (See *Exhibit 3*, decision, page 2) Pursuant to G.L.c. 111 §150A, ABC&D was also required to obtain Site Assignment approval from the Town of Ware BOH to include MSW handling.

ABC&D's Notice of Exemption also failed to disclose that in the fall of 2007 ABC&D applied for Site Assignment⁴ from the Town of Ware. (See *Exhibit 3*). Pursuant to Mass. General Laws Chapter 111 §150A, the Town of Ware BOH was required to hold public hearings on ABC&D's application. During the period of January 8, 2008 through February 13, 2008, five (5) days of well attended public hearings (which were locally televised) were conducted by the Ware BOH. (See *Exhibit 9*, a certified copy of the Board of Health's decision). This public hearing included the testimony of 12 witnesses, which resulted in a transcript over 1,190 pages long, and 111 exhibits that spanned thousands of pages. (See *Exhibit 3*, docket showing the filing of the Administrative Record Vol. 1-13).

Notably, ABC&D's Notice of Exemption also failed to disclose to the STB that on or about February 21, 2008, the Ware BOH issued its decision denying ABC&D's Site Plan Assignment to handle MSW at its facility. (See *Exhibit 9*). Further, ABC&D failed to disclose to the STB in its exemption notice that on March 24, 2008, it appealed the findings of the Ware BOH to the

⁴ABC&D was seeking to modify its C&D approval to also include MSW.

Hampshire Superior Court, Docket No. HSCV2008-00063. (See *Exhibit 3*). After extensive briefing and oral argument, the Hampshire Superior Court issued a 20 page decision dated March 26, 2009 and entered March 30, 2009, affirming the decision of the Ware BOH to deny Site Plan Approval to ABC&D for MSW, a fact also not disclosed by ABC&D to the STB. (See *Exhibit 3*). Moreover, ABC&D has failed to inform the STB that on or about April 28, 2009, ABC&D filed a Notice of Appeal to the Massachusetts Appeals Court of the decision of the Hampshire Superior Court and that litigation remains pending. (See *Exhibit 3*).

Since its construction, the 773 feet of rail siding or spur line to the C&D facility has been operated by the Massachusetts Central Railroad Corporation which operates the railway to which the spur line connects.⁵ (See ABC&D's Notice). From the inception of the planning of ABC&D's facility in 2001 until the filing of the Notice of Exemption on February 24, 2010, ABC&D has never held itself out as a rail carrier or a provider of rail services or a common carrier, but has always held itself as a C&D waste facility.⁶ (See *Exhibits 1, 2, 3, 6, 8, 9 and 11*).

It is additionally noted that the Vice President and General Manager of the Massachusetts Central Railroad Corporation, Mr. Robert Bentley, has had a conversation with Mr. Paul Hills (Ware's Community Development Director) wherein Mr. Bentley indicated that he had no knowledge or notice whatsoever of ABC&D's intention to take over operation of the 773 feet of spur line

⁵The rail line over which Massachusetts Central Railroad Corporation operates is owned by the Commonwealth of Massachusetts.

⁶Until 2007 when it began attempts to obtain site approval to handle MSW as well. However even after attempting to obtain approval to handle MSW, ABC&D still did not hold itself out as a rail carrier, provider of rail services or a common carrier.

connecting AB&CD's facility to the rail line of the Massachusetts Central Railroad Corporation.⁷

It should also be noted, despite ABC&D's silence on the matter in its Notice filing, that the individual, Patrick J. Hannon, who signed the "Verification" and the "Certification" attached to ABC&D's Notice, has no public record of involvement with common carrier operations but is publicly known to be connected with MSW facilities. (See *Exhibit 10*, a true and accurate copy of a Worcester Magazine article quoting Mr. Hannon). It is further noted that Mr. Hannon is not identified as an officer or director of ABC&D in any of its Secretary of the Commonwealth filings. (See *Exhibit 6*). There is no evidence of any vote of the ABC&D directors authorizing Mr. Hannon to file the Verified Notice of Exemption with the STB on behalf of ABC&D.

Based upon the above indisputable facts, it is clear that only after denial by the Ware BOH of ABC&D's Request for Site Assignment pursuant to Massachusetts General Laws Ch. 111, §150A, and after the Hampshire Superior Court upheld the determination of the Ware BOH, did ABC&D file this Notice of Exemption in an attempt to recharacterize itself as a common carrier in order to invoke federal law to allow it to handle MSW after having failed to obtain necessary local approval under applicable Massachusetts law. It is blatantly apparent that the motivation behind ABC&D's filing of this Notice of Exemption is not to operate a common carrier over 773 feet of rail line, but to re-characterize itself as a rail carrier in order that it might attempt to put itself under the cloak of the ICCTA and the Clean Railroads Act of 2008 to obtain permission (which has been denied under Massachusetts law) to handle MSW at its facility.

⁷This information was communicated by Paul Hills to Judy Metcalf following Mr. Hills conversation with Mr. Bentley.

IV. ARGUMENT

A. The Notice of Exemption Should Be Deemed Void *Ab Initio*.

According to its submission, ABC&D filed its Notice pursuant to 49 CFR 1150.31 et seq.

Subpart (c) of 49 CFR 1150.32, referring to this type of Notice, provides in relevant part:

- (c) if the notice contains false or misleading information, the exemption is void *ab initio*.

In construing a similar provision, this Board ruled:

In administering the class exemption, the Board depends on the accuracy of the information in the carrier's certification. To ensure the integrity of the class exemption procedure, our regulations provide that "[i]f the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Board shall summarily reject the exemption notice." 49 CFR 1152.50(d)(3). This rule contains no exception for *de minimis* errors in the notice of exemption concerning usage of the line.

BNSF Railway Company, STB Docket No. AB-6(Sub-No. 430X). "An exemption expedites and simplifies certain cases where a more searching regulatory inquiry is not necessary to advance the rail transportation policy (RTP), by relieving parties of some of the requirements that would apply under the otherwise applicable regulatory provision." The board will "undo" a transaction in its entirety in order to "protect our processes". SF&L Railway, Inc., STB Docket No. 33995 (January 31, 2003).

1. ***ABC&D Has Failed to Disclose Pending State Action Concerning the Property in Question***

In the pending Notice of Exemption, ABC&D has jeopardized "the integrity of the class exemption procedure" by failing to disclose to the Board that its intended use of its facility to handle solid waste has already been prohibited by the Town of Ware which, after multiple days of hearings,

denied the application of ABC&D to operate as a solid waste transfer station. (See *Exhibit 9*). Furthermore, ABC&D failed to disclose to this Board that it appealed that decision to the Massachusetts Superior Court (Hampshire County), which upheld the decision of the Town of Ware to deny the siting application. (See *Exhibit 3*). Finally, ABC&D failed to disclose to this Board that it appealed the decision of the Superior Court to the Massachusetts Appeals Court, and that litigation is still pending. (See *Exhibit 3*).

2. *ABC&D Has Failed to Disclose That Massachusetts Law Prohibits the Use of a C&D Facility, Like ABC&D's, For Any Other Purpose "Without the Prior Written Approval" of the DEP.*

In its Notice, page 4, ABC&D acknowledges that "[i]t obtained and continues to hold . . . all state and local permits necessary in order to handle construction and demolition debris." ABC&D obtained those permits and operates its C&D facility pursuant to Massachusetts General Laws Ch. 111§150A. This Chapter also controls the ongoing operations of such duly licensed facilities. In pertinent part, Section 150A provides:

No site on which a facility [such as a C&D facility] was operated shall be used for any other purpose without the prior written approval of the department [DEP].

ABC&D has not provided this Board with any evidence that it has obtained such "prior written approval" from DEP to operate as a common carrier from this facility. Indeed, on information and belief, the Town of Ware does not believe that any such approval was obtained. Without such approval, ABC&D is prohibited from operating for "any other purpose," including providing common carrier services, at its facility in Ware. The requirement for such prior approval is necessitated by the hazardous type of operations conducted at a C&D facility, operations which are

inconsistent with the conduct of common carriage with the general public. ABC&D's failure to disclose this statutory obligation to the Board is another example of the applicant's providing false and misleading information to the Board and is a further ground for declaring the Notice void *ab initio*.

3. *ABC&D's Conduct Jeopardizes the Integrity of the Exemption Procedure.*

ABC&D's conduct jeopardizes the integrity of the exemption procedure in a manner similar to the conduct of the applicant in Jefferson Terminal Railroad Company ("Jefferson"), STB Docket No. 33950 (March 19, 2001). Jefferson invoked class exemption pursuant to 49 CFR 1150.31 to operate a 1.2 mile rail line. Jefferson failed to disclose that it had acquired this track from its corporate parent and that the corporate parent had received a notice that the rail line in issue was the subject of a condemnation action that had been commenced by the city of Detroit prior to the transfer of the track to Jefferson. In revoking the Notice of Exemption granted to Jefferson, the Board noted that under the licensing provisions of 49 USC 10901 a noncarrier may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." "That means the Board must examine and weigh the public interest." The Board went on to rule that "[t]here are instances, however, where full regulatory scrutiny is not necessary, and so, under 49 USC 10502 and 49 CFR 1121, any party may request an exemption from the otherwise applicable regulatory provisions, on the grounds that full regulatory scrutiny is not necessary to carry out the national transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power. . . . Thus, under our regulations at 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within seven days, subject to the authority being later revoked (if our regulatory

scrutiny is found to be necessary) or treated as void *ab initio* (if the exemption notice is found to contain false or misleading information)." Jefferson's failure to make full disclosure of the circumstances involving the City's condemnation was a basis for the Board's revocation of the exemption previously granted to Jefferson.

This Board also revoked a modified rail certificate of public convenience and necessity which had been issued pursuant to 49 CFR 1150.23 (a), when petitioners demonstrated to the Board that the railroad made false and/or misleading representations regarding the nature and status of its purported interest in the right-of-way that was the subject of the notice. When the true nature of the railroad's interest was shown to be false, the exemption was vacated as void *ab initio*. Black Hills Transportation Inc., STB Docket No. 34924 (January 26, 2010).

The importance of disclosing state involvement in the property that is the subject of the notice of exemption was highlighted in the decision in US Rail Corporation, STB Docket No. 35042 (October 7, 2008). In that case this Board rejected US Rail's notice of exemption to lease and operate over certain track that was being constructed because US Rail failed to disclose that the city of Patterson, New Jersey had initiated a condemnation action involving the property at issue, and that this failure was "materially misleading by omission, rendering the notice void *ab initio*."

Since 2006 ABC&D has operated as a private facility that accepts for a fee construction and demolition debris, then sorts and recycles that debris. (See *Exhibit 6*). In August of 2007, ABC&D sought to expand its operations into a facility that also accepts MSW for recycling; first filing with the Massachusetts DEP and then with the Town of Ware BOH. (See *Exhibit 8*). Its site assignment to operate a MSW facility was denied by the Town of Ware in February of 2008. (See *Exhibit 9*). ABC&D appealed this decision to the Hampshire Superior Court in Massachusetts and in a 20 page

decision, the BOH's decision was affirmed and upheld by the court. (See *Exhibit 3*). ABC&D has subsequently appealed that decision to the Massachusetts Appeals Court. (See *Exhibit 3*).

At no time prior to the submission of its Notice has ABC&D ever even *hinted* to the Town or in any other public forum that it even *considered* being a common carrier. Common carriage is not identified as a type of business it intended to undertake in ABC&D's Articles of Organization, (See *Exhibit 6*) nor is it mentioned in its DEP application, the BOH site assignment proceeding or the pending litigation. (See *Exhibits 3, 8 and 9*).

Indeed, as recently as January 2008, ABC&D testified under oath concerning its intentions with respect to the property that is the subject of its Notice of Exemption, and never once mentioned the possibility of providing common carriage. ABC&D testified at the BOH hearing in relevant part as follows:

Well, my future plans are to get the MSW operation up and running to provide funding for the recycling center.

(See *Exhibit 12, pp. 629-630* for a true and accurate copy of Mr. O'Riley's testimony at the BOH hearing). Further, in response to the question "and this facility with respect to MSW is going to be a transfer station isn't it?" ABC&D's expert, Garrett Keegan, testified "No, a processing and handling facility." (*Exhibit 12, p. 331*). In addition, Mr. O'Riley testified in the affirmative that with regard to the general MSW that ABC&D intended to process, it was transferred into a railcar or an over-the-road truck, and furthermore ABC&D, instead of getting paid for this material, would actually have to pay to have the material taken away. (*Exhibit 12, pg. 705*).

Having intentionally failed to disclose this history to the STB, ABC&D now seeks to take advantage of the streamlined process offered to those entities with a sincere interest in providing

common carriage service. There can be little doubt that providing common carriage is not consistent with the operation of a C&D and MSW facility. In fact, as evidenced by Massachusetts statutory law, before any other operations can be conducted at a facility that handles C&D, the DEP must approve such operations in writing. The Board should deny the Notice because ABC&D's alleged proposal is not the type of routine matter the notice of exemption proceedings were intended to address and in fact requires prior approval by state regulators. The history of the business of ABC&D, its true future intentions to circumvent existing Massachusetts permitting decisions, its failure to obtain required state approvals, and its ability to reasonably provide common carriage are all subjects that need to be addressed by way of the "more searching regulatory inquiry" (SF&L Railway, Inc., STB Docket No. 33995) which ABC&D seeks to avoid by using the Exemption procedure.

Indeed, the verified statement of ABC&D is not only misleading, but false where it states that ABC&D "understands that if it wishes to handle solid waste...it must (1) obtain all state and local permits necessary in order to handle such solid waste..." when *in fact* it had applied for and been denied such permits. (See *Exhibits 8 and 9*). The false and misleading nature of its statements to this Board warrant a determination that the Notice of Exemption in this matter be rejected as void *ab initio*, pursuant to 49 CFR 1150.32(c).

B. The Notice of Exemption Should Be Denied as a Sham Transaction.

The Board has "inherent authority to act to ensure 'the fairness, efficiency, and integrity of its processes and the appropriateness of the conduct of the parties appearing before it.' " SF&L Railway, Inc., STB Docket No. 33995 (January 31, 2003) citing Railroad Ventures, Inc. v. STB, 299 F.3d 523, 563-64 (6th Cir. 2002), quoting Unbelievable, Inc. v. NLRB, 118 F.3d 452, 454 (D.C. Cir.

1994) (Wald dissenting). The Board has relied upon this inherent authority to revoke sham transactions to ensure that the integrity of its process. *Id.*, see also, Land Conservancy - Acq. & Oper. - Burlington Northern, 2 S.T.B. 673 (1997) reconsideration denied, STB Docket No. 33389, petition for judicial review dismissed *sub nom*, The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000).

Where the Board finds that the applicant seeks to use the class exemption procedures to circumvent the purposes for which they were intended, the Board will revoke a notice of exemption. In Jefferson Terminal Railroad Company ("Jefferson"), STB Docket No. 33950 (March 19, 2001), in addition to finding that false or misleading representations rendered a notice of exemption void *ab initio*, the Board rejected Jefferson's notice because it found that the notice:

was merely a device to acquire or retain property for non-rail purposes using federal preemption as a shield. The timing and failure to inform us of the condemnation proceedings suggest an effort by [the corporate parent] and Jefferson to use their exemption process to insulate the property from the condemnation process by invoking our jurisdiction to bolster Jefferson's claim that the property is a rail line beyond the reach of state or local condemnation authority. We will not permit our processes to be misused in that manner.

Similarly, in US Rail Corporation, STB Docket 35042 (October 7, 2008), the Board concluded from its finding that since the corporation made no mention of the condemnation proceedings already undertaken by the City of Detroit at the time its notice of exemption was filed, that US Rail:

was not candid in its notice of exemption, but the statement leaves us with the clear impression that US Rail was attempting to use the federal preemption that the use of our notice of exemption process would confer on SG's property as a means of avoiding the City's authority to pursue the condemnation proceeding.

The Board found that this conduct warranted rejection of the notice of exemption. For precisely the same reasons, the Board should now reject the notice of exemption submitted by ABC&D.

At the time ABC&D filed its Notice it was aware that it was still before the Massachusetts state courts concerning its right to operate a municipal solid waste facility (see *Exhibit 3*), that those rights had been denied at the municipal level (See *Exhibit 9*) and the Superior Court level (see *Exhibit 3*), but failed to disclose this to the Board. Instead it is apparent that ABC&D intends to try to obtain railroad status and thus invoke federal preemption to accomplish that which it had previously failed to do. The Board should reject this attempt to use federal preemption as an end run around what ABC&D previously attempted to do pursuant to state law. ABC&D's new found interest in becoming a "common carrier" is clearly the type of sham transaction this Board has consistently rejected.⁸ There is nothing in ABC&D's history that would warrant this Board to accept its representation that it intends to open its doors to the public, when in fact, historically, it had only shipped its own construction and demolition debris.⁹

C. The Notice of Exemption Procedure Pursuant to 49 CFR 1150.31 is Not Appropriate in a Complicated and Controversial Matter

The STB will reject a notice of exemption when the transaction is "inappropriate for consideration under the class exemption procedure at 49 CFR 1150.31, which allows parties involved in *routine transactions* to use abbreviated summary procedures..." Northeast Interchange Railway, LLC., ("NIR") STB Docket No. 34735 (November 17, 2005); *see also* The Burlington

⁸In fact, in its August 2007 Facility Impact Assessment submission to the Town of Ware, ABC&D reported that "the entire interior of the building will be used for the tipping, consolidation, stockpiling and loading of incoming MSW and C&D material," revealing no intention to provide common carrier services. See *Exhibit O*, a true and accurate copy of page 3 of ABC&D's own Facility Assessment.

⁹As noted above, ABC&D would accept for a fee a customer's construction and demolition debris and then sort and recycle those materials.

Northern and Santa Fe Railway Company, STB Docket No. 34645 (January 14, 2005) (rejecting an exemption notice because the transaction contemplated was complicated and controversial and the exemption procedure is typically reserved only for such matters which are uncomplicated, uncontroversial and not subject to substantial opposition).

In NIR, citing Riverview Trenton Railroad Company, STB Docket No. 33980 (February 15, 2002), the STB explained that:

the class exemption is meant to be used for routine transactions that have not attracted substantial controversy and local interest, such as transactions where new operators would be continuing an existing common carrier rail service over lines that selling carriers can no longer operate profitably. Where an individual transaction differs substantially from the type of routine matter that the class exemption was intended for, the Board may reject or revoke notices seeking to use the class exemption so that it may consider the merits of the proposal in more depth, through either a petition for exemption or an application.

ABC&D's exemption request is neither routine nor non-controversial. As in NIR, the STB rejected the notice of exemption finding that "[t]he current construction and demolition waste operation at the site has attracted substantial opposition and local interest, including litigation in which the operations of NIR's predecessor were found to be a threat to the public health by the state court."

Similarly, ABC&D's MSW operation has also attracted substantial opposition and local interest, including litigation wherein ABC&D's proposed MSW facility was found by the BOH to be a threat to the public health and safety and/or safety to the environment and such finding was affirmed and upheld by the Hampshire Superior Court. (See *Exhibits 3 and 9*).

Given the facts of the ABC&D matter, facts which were intentionally not disclosed by

ABC&D to the STB, this matter is not appropriate for the abbreviated exemption procedure. Further, given the serious doubts that surround ABC&D's statement that it will provide common carrier services, the matter deserves the more in-depth scrutiny that comes with the formal application process and development of a complete record, pursuant to 49 CFR 1150.2 through 1150.9. See Winamac Southern Railway Company, STB Docket No. 35208, (January 9, 2009) (noting that in general, the notice of exemption procedure is an expedited means of obtaining Board authority for transactions that do not require greater regulatory scrutiny and therefore, notices of exemption are intended to be used for routine and non-controversial cases and in cases where unresolved issues arise, the STB will reject the notice). ABC&D should be required, among other things, to set forth the facts showing that applicant is a common carrier by railroad [1150.3(b)], details about the amount of traffic and a general description of commodities [1150.4(b)], the purpose of the proposal and an explanation of why the public convenience and necessity require or permit the proposal [1150.4(c)], operation data [1150.5], and environmental and energy data [1150.7]. The more extensive record of an application or petition for exemption will allow the Town of Ware to "air its objection and the Board to fully consider the matter." Id.

V. Conclusion

For the reasons set forth herein, the Notice of Exemption should be dismissed or rejected by the STB on the grounds that the submission is false and misleading and that the subject of this application has attracted substantial opposition and local interest and indeed remains in litigation before the Massachusetts Appeals Court. The request of ABC&D Recycling, Inc. is far more suited

for the in depth scrutiny contemplated by the formal application process of 49 CFR 1150.2 et seq.

TOWN OF WARE

By 

David A. Wojcik, BBO#532040

John A. Mavricos, BBO#325360

Nicole B. Caprioli, BBO#643829

Christopher, Hays, Wojcik

& Mavricos, LLP

370 Main Street

Worcester, MA 01608

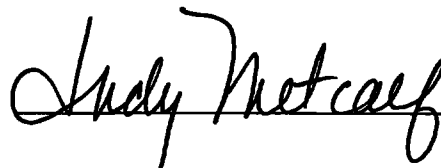
508-792-2800

VERIFICATION

I, Judy Metcalf, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Opposition to Notice of Exemption.

Executed on March 17, 2010.

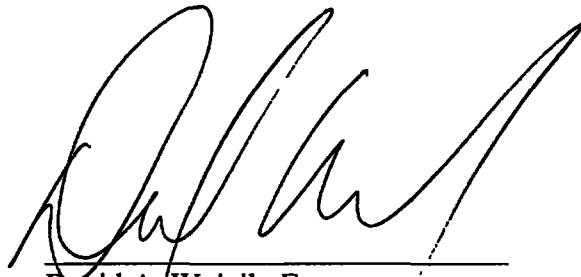
A handwritten signature in black ink that reads "Judy Metcalf". The signature is written in a cursive style with a horizontal line drawn through the middle of the text.

CERTIFICATE OF SERVICE

I certify that I have this day served copies of attached Town of Ware's Verified Petition to Reject and/or Dismiss Verified Notice of Exemption and Request for Stay of Effective Date of Exemption and Exhibits upon all parties of record in this proceeding, by mailing a copy, via Express Mail to:

Leonard M. Singer, Esq.
101 Arch Street, Ninth Floor
Boston, MA 02110

March 18, 2010

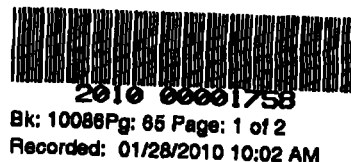
A handwritten signature in black ink, appearing to read 'David A. Wojcik', written over a horizontal line.

David A. Wojcik, Esq
Christopher, Hays, Wojcik & Mavricos, LLP
370 Main Street
Worcester, MA 01608
508-792-2800

EXHIBIT 1



TOWN OF WARE
MASSACHUSETTS 01082



PLANNING BOARD

**DECISION ON SPECIAL PERMIT
OR EXTENSION, MODIFICATION OR RENEWAL
OF SPECIAL PERMIT**

Application No. SP- 2001- 001

Date April 18, 2001

TO: The O'Riley Family Trust, 265 Church Street, P.O. Box 719, Ware, MA 01082

(Name and Address of Owner)

Affecting the rights of the owner with respect to the use of premises on

198 East Street, Ware, MA 01082

(Identify Property Affected)

The record title standing in the name of O'Riley Family Trust

(Name and Address)

by a deed duly recorded in the Hampshire County Registry of Deeds in

Book 4901, Page 45

Registry District of Land Court; Certificate No. N/A

Book _____ Page _____

Notice is hereby given that following the Public Hearing on April 4, 2001

(Date)

on the application in this case so as to permit the expansion of the existing business to

include a railroad siding and processing areas for transfer and recycling of asphalt,

brick, concrete, construction and demolition materials and wood.

The Board, at its meeting on April 18, 2001

(Date)

☒ VOTED TO GRANT the application under Section 5.61 / (Industry, Not Restricted) of the Zoning By-Law based on findings as detailed in the Record of the Proceedings, subject to the following conditions, safeguards and limitations on use or time, if any: _____

plus compliance with all other applicable laws, regulations and codes.

(OVER)

☐ VOTED TO DENY the application.

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of the General Laws, and that copies of this decision with the Record of Proceedings and plans referred to in the decision, if any, were filed with the Town Clerk and the Planning Board on

April 20, 2001

(Date)

Any appeal from this decision can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within 20 days after the date of filing of this decision with the Town Clerk.

WARE PLANNING BOARD
(Acting as Special Permit Granting
Authority for the Town of Ware)

By: 

Christopher DiMarzio, Chairman & Clerk

Signed and Certified: 

Town Clerk

on: May 14, 2001

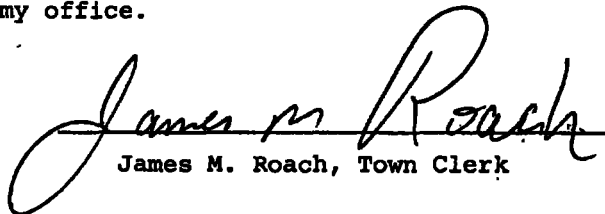
(Date)



TOWN OF WARE
MASSACHUSETTS 01082

CERTIFICATE OF NO APPEAL

I, James M. Roach, Town Clerk of the Town of Ware, MA,
hereby certify that as of this date, May 14, 2001 no
Notice of appeal of the above decision of the Planning Board
has been received by my office.


James M. Roach, Town Clerk

ATTEST. HAMPSHIRE,  REGISTER
MARIANNE L. DONOHUE

EXHIBIT 2



2010 00003223

Bk: 10103Pg: 20 Page: 1 of 5

Recorded: 02/18/2010 09:49 AM

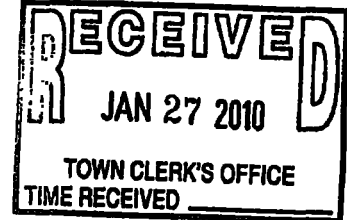
TOWN OF WARE
MASSACHUSETTS 01082

PLANNING BOARD

DECISION ON SITE PLAN APPROVAL

Date: November 7, 2001

Reference: SP 2001-002



TO: The O'Riley Family Trust

Affecting the rights of the owner with respect to the use
of premises on 198 East Street (Route 9) Ware,
Massachusetts 01082

The record standing in the name of the O'Riley Family Trust
by a deed duly recorded in the Hampshire County Registry of
Deeds in Book 4901, Page 45.

Notice is hereby given that following the Public Hearing on
October 17, 2001*

On the application in this case so as to permit the
expansion of the existing business to include a railroad
siding and processing area for transfer and recycling of
asphalt, brick, concrete, construction and demolition
material and wood.

* original Public Hearing held on September 5, 2001

The Board, at its meeting on November 7, 2001

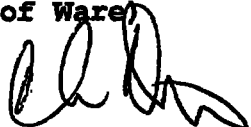
XX VOTED TO GRANT the application under Sections 2.5 and
2.6 of the Zoning By-Law based on findings as detailed
in the Record of the Proceedings, subject to the ORDER
OF CONDITIONS, attached hereto and made a part hereof
plus compliance with all other applicable laws,
regulations and codes.

February 5, 2010 The document is a true copy of the one filed in the
Office of the Town Clerk, Ware, MA and contains 5 pages

Nancy J. Talbot Town Clerk of Ware, MA

ANY APPEAL from this decision can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within 20 days after the date of filing of this decision with the Town Clerk.

WARE PLANNING BOARD
(Acting as Special Permit
Granting Authority for the
Town of Ware)

BY: 
Christopher DiMarzio
Clerk

Signed and Certified:


James Roach
Town Clerk

On DATE: Dec. 3, 2001

I, James M. Roach, Town Clerk of the Town of Ware, MA, hereby certify that as of this date, Dec. 3, 2001, no notice of appeal of the above decision of the Planning Board has been received by my office.


James M. Roach, Town Clerk

ORDER OF CONDITIONS

THE O'RILEY FAMILY TRUST
SITE PLAN APPROVAL

1. Bond shall be posted for cleanup in the event that cleanup is needed, said amount to be determined by Department of Environmental Protection.
2. Buffer vegetation:
 - a. Shall be placed along Rts. 9 and 32 and shall consist of arborvitae planted outside fence 4' on center, no less than 4' tall
 - b. to be maintained at maturity no lower than 6 feet as shown on plan
 - c. there will be perpetual maintenance
 - d. all vegetated buffers shall be planted no later than one and one-half (1.5) years after issuance of special permit approval, site plan approval
 - e. request for additional vegetated buffer to be determined after site work completed as necessary
 - f. white pine buffer on south corner shall be planted as shown on plan, with perpetual maintenancePLEASE REFER TO DEFINITIVE PLAN
3. Mandated pavement of entrance/exits to weigh station and 30' beyond
PLEASE REFER TO DEFINITIVE PLAN
4. Queuing of trucks shall conform to plan as specified and all areas for queuing shall always be clear and ready for safe passage
5. An access road to facility shall be constructed according to Plan and at all times maintained for safe passage of municipal and emergency vehicles

6. All tipping shall take place inside the building with the exception of clean up material and ABC
PLEASE REFER TO DEFINITIVE PLAN
7. All paved areas to be pitched in such a way to channel all rainwater and runoff to catch basin as shown on Plan
8. Combined noise levels shall not exceed the levels set forth in The Town of Ware Zoning By-Laws Section 5.630 (b).
9. There will be a 20' height cap on cubic yards of exterior storage of processed and unprocessed materials
10. Dust control shall be maintained at all times to the satisfaction of the Town of Ware
11. Hours of Operation:
 - a. Monday - Friday operating hours 7:00a.m. to 4:00 p.m.
 - b. Saturday hours 7:00 a.m. to 1:00 p.m. Tipping and internal processing only, no exterior crushing allowed
 - c. Saturday hours will be reviewed on a 6-month basis to determine whether there is a noise nuisance. Reviews will be held every six (6) months for a period of one (1) year. Such determination shall be made by the Ware Planning Board.
 - d. There will be no hours of operation on the following days:
 - (1) Christmas
 - (2) New Years
 - (3) Thanksgiving
 - (4) Veterans Day
 - (5) Fourth of July
 - (6) Labor Day
 - (7) Memorial Day

12. Non Compliance of any condition imposed on this permit can and shall result in a revocation of Special Permit
13. The proponent agrees to accept, without charge, a total of two hundred fifty (250) tons of clean wood, brick, concrete or asphalt from the Municipality of Ware per year of operation.
14. The construction, operation, maintenance and closure of this facility shall be performed in strict compliance with the Final Permit Conditions which shall be issued by the Massachusetts Department of Environmental Protection pursuant to MGL c. 111 s. 150A and 310 CMR 19.036, a copy of which shall be attached and made a condition of this Site Plan Approval when it becomes available.

ATTEST HAMPDEN, Marianne L. Donohue, REGISTERED
MARIANNE L. DONOHUE

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

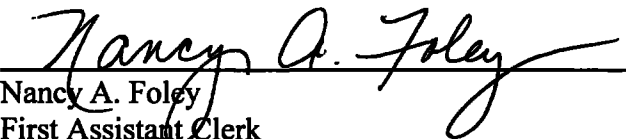
Hampshire, ss.

**Superior Court Department
Civil Action No. 08-063**

I, Nancy A. Foley, First Assistant Clerk of the Court for the County of Hampshire
aforesaid, hereby certify that the attached is a certified copy of the Docket Sheet, Decision of
Judge Rup, Judgment, and Notice of Appeal in **Civil Action No. 08-063, A,B,C & D**
RECYCLING, INC. VS. TOWN OF WARE BOARD OF HEALTH



Witness my hand and the seal of the Superior Court
Department of the Trial Court of the Commonwealth
of Massachusetts this 16th day of March , 2010.



Nancy A. Foley
First Assistant Clerk

HSCV2008-00063

ABC & D Recycling Inc. v Board of Health of the Town of Ware

File Date	03/24/2008	Status	Suspended (Pending other case) (suothr)
Status Date	08/17/2009	Session	A - Civil A- CtRm 2-3rd fl
Origin	1 - Complaint	Case Type	E02 - Admin agency appeal (30A)
Track	X - Accelerated track	Lead Case	
		Jury Trial	Unknown

DEADLINES

	Service	Answer	Rule12/19/20	Rule 15	Discovery	Rule 56	Final PTC	Judgment
Served By								
Filed By	06/22/2008							03/19/2009
Heard By								

PARTIES

Plaintiff

ABC & D Recycling Inc.
Active 03/24/2008

Private Counsel 547503

Shephard S Johnson Jr
Shepard S. Johnson Jr & Assoc PC
628 Pleasant Street Suite 428
New Bedford, MA 02740
Phone: 508-991-5000
Fax: 508-991-5252
Active 03/24/2008 Notify

Private Counsel 564255

Matthew L Donohue
Donohue Hyland & Donohue
1707 Northhampton Street
Holyoke, MA 01040
Phone: 413-536-1977
Fax: 413-538-7138
Active 03/24/2008 Notify

Defendant

Board of Health of the Town of Ware
Served: 03/28/2008
Answered: 04/28/2008
Answered 04/28/2008

Private Counsel 643829

Nicole B Caprioli
Christopher Hays Wojcik & Mavricos
370 Main Street
Suite 700
Worcester, MA 01608
Phone: 508-792-2800
Fax: 508-792-6224
Active 04/28/2008 Notify

ENTRIES

Date	Paper	Text
03/24/2008	1.0	Verified Complaint for Appeal of Administrative Decision & civil action cover sheet filed
03/24/2008		Origin 1, Type E02, Track X.
03/24/2008	2.0	Atty Matthew L Donohue's notice of appearance for ABC & D Recycling Inc.
03/28/2008	3.0	SERVICE RETURNED: Board of Health of the Town of Ware(Defendant)
04/28/2008	4.0	ANSWER and COUNTERCLAIM: Board of Health of the Town of Ware(Defendant)

HSCV2008-00063
ABC & D Recycling Inc. v Board of Health of the Town of Ware

Date	Paper	Text
05/19/2008	5.0	ANSWER by ABC & D Recycling Inc. to COUNTERCLAIM of Board of Health of the Town of Ware.
06/25/2008	6.0	Administrative record filed by Board of Health of the Town of Ware. (Volume 1 through 13)
08/28/2008	7.0	Defendant Board of Health of the Town of Ware's MOTION for Assessment of Costs and Attorney's fees incurred in preparing the administrative record along with MOTION of the plaintiff to strike and for costs.
09/02/2008	8.0	Plaintiff ABC & D Recycling Inc.'s MOTION for leave to file a reply memorandum to defendant's opposition to plaintiff's motion to strike and for costs.
09/25/2008		Motion (P#7) Defendant's Motion for Assessment of Costs and attorneys fees incurred in preparing the administrative record. - After hearing the motion is DENIED. Plaintiff's motion to strike and costs - I will leave the decision as to this motion to the judge hearing this motion upon representation of counsel for the defendant that all documents presented to and relied upon by the board are part of the record.
11/12/2008	9.0	Motion for costs DENIED. (Judd J. Carhart). Notices mailed 9/26/2008 Plaintiff ABC & D Recycling Inc.'s MOTION for Judgment on pleadings (Rule 12)
11/12/2008	10.0	Opposition of the Board of Health of the Town of Ware to ABC&D Recycling, Inc's Motion for Judgment on the Pleadings.
11/19/2008	11.0	Plaintiff's motion for leave to file a reply memorandum to defendant's opposition to plaintiff's motion for judgment on the pleadings.
12/04/2008	12.0	Defendant's motion to submit a sur-reply memorandum to plaintiff's motion for judgment on the pleadings and sur-reply memorandum.
12/11/2008		Notice sent to appear on 1/2/2009 at 10:00 am for a rescheduled hearing on Motion for Judgment on the Pleadings and other relevant matters.
01/02/2009		Hearing on (P#9) motion for judgment on the pleadings) held, matter taken under advisement. (Mary-Lou Rup)
03/30/2009		Motion (P#7) Plaintiff's Motion to strike DENIED. See Memo of Decision #13. (Mary-Lou Rup) Notices mailed 3/30/2009
03/30/2009		Motion (P#9) The Board's decision is affirmed. See Memo of Decision #13. (Mary-Lou Rup). Notices mailed 3/30/2009
03/30/2009	13.0	MEMORANDUM OF DECISION AND ORDER on the plaintiff's motion for judgment on the pleadings and the plaintiff's motion to strike. (Mary-Lou Rup). Copies mailed 3/30/09.
03/30/2009	14.0	JUDGMENT as a result of Motion/Hearing: Judg on Pleading (Mary-Lou Rup). Copies mailed 3/30/2009
04/28/2009	15.0	Plaintiff ABC & D Recycling Inc.'s notice of appeal
05/11/2009	16.0	Certification of transcript ordered by Attorney Marsh.
05/28/2009	17.0	Plaintiff ABC & D Recycling Inc.'s MOTION for reconsideration of Memorandum of Decision on the Plaintiff's Motion for Judgment on the Pleadings and the Plaintiff's Motion to Strike. (Copy mailed to Judge Rup in Springfield)

HSCV2008-00063**ABC & D Recycling Inc. v Board of Health of the Town of Ware**

Date	Paper	Text
06/11/2009		Motion (P#17) So much of this motion as seeks reconsideration is denied. To the extent that this motion renews the plaintiff's earlier request to strike certain documents and evidence, it is denied as the Board was not a "party" within the meaning of 310 CMR section 16 et seq. Finally, Count II (seeking declaratory judgment regarding technical fees) is more appropriately addressed in a motion for summary judgment, and further clarification is denied. On Deft's Opposition - To the extent that the defendant requests an award of its costs and attorneys fees, that request is denied, as the plaintiff's motion was not "blatantly frivolous" as the defendant argues. (Rup, J.) Notices mailed 6/18/2009
06/17/2009	18.0	Transcript of Hearing on Plaintiff's Motion for Judgment on the Pleadings received (1 volume) from Court Reporter Trudeau, Roger
08/10/2009	19.0	Defendant's MOTION to stay assembly of the record on plaintiff's appeal of the court's decision on ABC&D's motion for judgment on the pleadings and motion to strike until final judgment on defendant's counterclaim. Copy mailed to Judge Rup in Springfield.
08/17/2009		Motion (P#19) ALLOWED. No opposition having been filed. (Rup, J.) Notices mailed 8/17/2009

EVENTS

Date	Session	Event	Result
09/02/2008	Civil A- CtRm 2-3rd fl	Status: administrative (7) 9A pckg & (8)	Event held as scheduled
09/25/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Assess Costs (7) Defendant's Motion for assessment of costs and attorneys fees incurred in preparing the administrative record with Plaintiff's Motion to strike and for costs; (8) Plaintiff's Motion for leave to file a reply memorandum to defendant's opposition to plaintiff's motion to strike and for costs.	Event held as scheduled
11/13/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading Motion to be filed.	Event not held-joint request
11/19/2008	Civil A- CtRm 2-3rd fl	Status: administrative (11) Motion To be scheduled for hearing	Event held as scheduled
12/11/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading (7) Plaintiff's Motion to strike; (9) Plaintiff's Motion for Judgment on the pleadings; (10) Opposition of the Board of Health of the Town of Ware to motion for judgment on the pleadings; (11) Plaintiff's Motion for leave to file a reply memorandum to defendant's opposition to plaintiff's motion for judgment on the pleadings.	Event not reached by Court
01/02/2009	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading Motion for Judgment on the Pleadings and other relevant matters.	Event held as scheduled
05/28/2009	Civil A- CtRm 2-3rd fl	Status: administrative #17 Motion for Reconsideration mailed to Judge Rup in Springfield.	Event held as scheduled
08/10/2009	Civil A- CtRm 2-3rd fl	Status: administrative #19 mailed to Judge Rup in Springfield.	Event held as scheduled
03/29/2010	Civil A- CtRm 2-3rd fl	Conf: review status Status on counterclaim	

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

SUPERIOR COURT
C.A. No.2008-00063-A

ABC & D RECYCLING INC.,)
)
Plaintiff,)
)
v.)
)
BOARD OF HEALTH OF)
THE TOWN OF WARE,)
)
Defendant,)

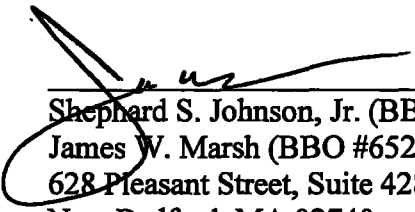
2009 APR 28 A 10:19
HAMPSHIRE SUPERIOR CRT
HARRY JEKANOWSKI JR
CLERK

PLAINTIFF'S NOTICE OF APPEAL

Plaintiff, ABC & D Recycling Inc. (hereinafter "Recycling"), hereby file their Notice of Appeal of this Honorable Court's Judgment on Plaintiff's Motion for Judgment on the Pleadings and Plaintiff's Motion to Strike, entered on March 30, 2009.

This Notice of Appeal is filed in pursuant to Rule 4, Rules of Appellate Procedure, within the 30-day period from the Court's Decision.

Respectfully submitted by the Plaintiff,
ABC & D RECYCLING INC.
By its Attorneys,
Shephard S. Johnson, Jr. & Associates, P.C.



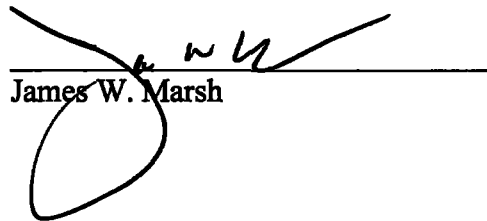
Shephard S. Johnson, Jr. (BBO #547503)
James W. Marsh (BBO #652425)
628 Pleasant Street, Suite 428
New Bedford, MA 02740
(508) 991-5000

DATE: April 23, 2009

CERTIFICATE OF SERVICE

I, James W. Marsh of Shephard S. Johnson, Jr. & Associates, P.C., Attorney for the Plaintiff, Defendant-in-Counterclaim, hereby certify that a true copy of above document was served upon the following counsel of record via first-class mail, postage prepaid mail on April 23, 2009:

David A. Wojcik, Esquire
Nicole B. Caprioli, Esquire
Christopher, Hays, Wojcik & Mavricos, LLP
370 Main Street
Worcester, MA 01608



James W. Marsh

14

Commonwealth of Massachusetts
County of Hampshire
The Superior Court

CIVIL DOCKET# HSCV2008-00063

ABC & D Recycling Inc.,
Plaintiff(s)

vs

Board of Health of the Town of Ware,
Defendant(s)

JUDGMENT ON MOTION FOR JUDGMENT ON THE PLEADINGS

This action came on for hearing before the Court, Mary-Lou Rup upon the Plaintiff's, ABC & D Recycling, Inc., Motion for Judgment on the Pleadings, and pursuant to the Court's Memorandum of Decision and Order,

It is **ORDERED** and **ADJUDGED**:

That the decision of the Board of Health of the Town of Ware is hereby affirmed.

Dated at Northampton, Massachusetts this 30th day of March, 2009.

By the Court (Rup, J.)


Harry Jekanowski, Jr.
Clerk/Magistrate

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2008-00063-A

ABC&D RECYCLING, INC.

vs.

BOARD OF HEALTH OF THE TOWN OF WARE

**MEMORANDUM OF DECISION AND ORDER ON THE PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS AND THE PLAINTIFF'S MOTION TO STRIKE**

INTRODUCTION

In this action brought pursuant to G. L. c. 30A, § 14, the plaintiff, ABC&D Recycling, Inc. ("Recycling"), seeks judicial review of a decision by the Board of Health of the Town of Ware ("Board"). Recycling claims that the Board's decision denying its application for a site assignment modification, which would permit it to accept municipal solid waste ("MSW") at its solid waste handling facility in Ware, was not supported by substantial evidence.

Recycling now moves for judgment on the pleadings in accordance with Superior Court Standing Order 1-96(4), and Mass. R. Civ. P. 12(c). It also moves to strike certain materials from the administrative record which it claims were erroneously included, and seeks attorney's fees and costs for bringing that motion. After a hearing, Carhart, J. presiding, this court denied both the Board's motion for costs and attorney's fees for preparing the administrative record, and Recycling's motion for costs and attorney's fees for bringing the motion to strike. (See docket item #7).

After reviewing the administrative record and the submissions by both parties, the Board's decision will be **AFFIRMED**. Recycling's motion to strike will be **DENIED**.

BACKGROUND

The following facts are taken from the administrative record and the parties' submissions, with discussion of additional facts reserved for the issues raised.

In 2003, Recycling applied to the Massachusetts Department of Environmental Protection ("DEP") and the Board for a determination of site suitability for a proposed solid waste handling facility in the town of Ware. (ABCD01488 - ABCD01738).¹ The proposed facility would handle and process a maximum of 750 tons per day of construction and demolition ("C&D") waste. The application was prepared by Green Seal Environmental, Inc. ("GSE"), and was submitted pursuant to G. L. c. 111, § 150A, as amended by St. 1997, c. 19, § 20, which states, in pertinent part, that no place shall be maintained or operated as a waste processing or handling facility "unless, after a public hearing, such place has been assigned by the [local] board of health."

Before the local board of health holds a hearing, DEP reviews the application to determine whether the proposed facility satisfies certain preliminary criteria. G. L. c. 111, § 150A. If it does, DEP will send a positive report to the local board of health, which must then decide whether or not a site within the town will be assigned for the facility. The local board must take specific "site suitability" criteria promulgated by DEP into consideration, *Id.*, and is charged with ensuring "that the facility or expansion thereof will not present a threat to the public health, safety or the environment." 310 Code Mass. Regs. 16.40(1)(b). The local board must "assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility which has received a positive site suitability report from the Department" unless doing so would present such a threat. *Id.* Finally, the board must issue a written decision stating the reasons why a site will or will not be assigned. G. L. c. 111, § 150A.

DEP approved Recycling's 2003 application, and in 2004, the Board assigned a site at 198 East Street in Ware. (ABCD01483 - ABCD01487). In 2006, the facility was constructed and opened for operation. (ABCD00008). Thereafter, in 2007, Recycling applied for a modification of its existing site assignment to allow it to accept MSW in addition to C&D. The application was prepared by Garrett Keegan ("Keegan") of GSE. DEP issued a positive site suitability report (ABCD00005), and on January 8, 2008, the Board began the public hearing process. The hearing took place over the course of five nights between January 8th and February 13th of 2008. At the beginning of each session, the Hearing Officer explained that "[t]he Board of Health is acting in this

¹ Pages in the administrative record will be hereinafter referred to by their date-stamped numbers.

case as the deciding body" whose decision "is based on the public hearing and the information and the documentation that's provided to the Board of Health as established under 310 CMR 16.20(10)(k)"² (ABCD00006), and that both the Board and Recycling would have the opportunity to examine and cross-examine each witness. (ABCD00007).

DISCUSSION

Judicial review of administrative agency proceedings is conducted through a motion for judgment on the pleadings. Superior Court Standing Order 1-96(4).³ While Superior Court Standing Order 1-96 sets forth the procedure for appealing a final agency decision, the substance of that decision is reviewed under the standards of the State Administrative Procedure Act, General Laws, chapter 30A, sections 1-17. After reviewing the entire record, the court will affirm an administrative decision unless it is "[a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." G. L. c. 30A, § 14(7), as amended by St. 1998, c. 463, § 33. The court may reverse the decision if it determines that a party's substantial rights have been prejudiced by a decision "unsupported by substantial evidence," G. L. c. 30A, § 14(7)(e), that is, "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1. See also *Arnone v. Commissioner of the Dep't. of Soc. Serv.*, 43 Mass. App. Ct. 33, 34 (1997); *Salaam v. Commissioner of the Dep't. of Transportation Assistance*, 43 Mass. App. Ct. 38, 39 (1997).

The party appealing the decision of an agency such as the Board of Health bears the burden of demonstrating its invalidity. See *Merisme v. Board of Appeals on Motor Vehicle Liability Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989); *Boston v. Outdoor Advertising Bd.*, 41 Mass. App. Ct. 775, 782 (1996); *Coggin v. Massachusetts Parole Bd.*, 42 Mass. App. Ct. 584, 587 (1997). When the court reviews an administrative decision, it must give due weight to the agency's experience, technical competence, specialized knowledge, and the discretionary authority conferred

² 310 CMR 16.20(10)(k) states, in relevant part, that "[a] board shall determine that a site is suitable for assignment as a site for a new or expanded solid waste facility unless it makes a finding, supported by the record of the hearing, that the siting thereof would constitute a danger to the public health, safety or environment, based on the criteria set forth and established under 310 CMR 16.40."

³ Pursuant to Superior Court Standing Order 1-96, effective March 18, 2002, "[c]laims filed in the Superior Court seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G. L. c. 30A, § 14," must be heard in accordance with the procedures outlined in the order.

upon it by statute. *Iodice v. Architectural Access Bd.*, 424 Mass. 370, 375-376 (1997), citing G. L. c. 30A, § 14(7). The reviewing court may not substitute its judgment for that of the agency, *Southern Worcester County Regional Vocational Sch. Dist. v. Labor Relations Comm'n.*, 386 Mass. 414, 420-421 (1982), citing *Old Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n.*, 372 Mass. 152, 154 (1977), and it must "defer to [the] administrative agency's fact-finding role, including its right to draw reasonable inferences from the facts found." *City of Salem v. Massachusetts Comm'n. Against Discrimination*, 44 Mass. App. Ct. 627, 641 (1988), overturned on other grounds by *Bain v. Springfield*, 424 Mass. 748, 763-764 (1997), and citing *Smith College v. Massachusetts Comm'n. Against Discrimination*, 376 Mass. 221, 224 (1978). Furthermore, the court may not dispute the agency's choice between two conflicting views, even though the court could justifiably make a different choice if the matter came before it de novo. *Zoning Bd. of Appeals of Wellesley v. Housing Appeals Comm'n.*, 385 Mass. 651, 657 (1982); *Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n.*, 401 Mass. 713, 721 (1988).

In this case, the court must review the entire administrative record to determine whether the Board's decision denying Recycling's application for a site assignment modification was supported by substantial evidence, taking into account whatever in the record fairly detracts from the evidence's weight. *Arnone*, 43 Mass. App. Ct. at 34; *Salaam*, 43 Mass. App. Ct. at 39; *Edward E. v. Department of Soc. Serv.*, 42 Mass. App. Ct. 478, 480 (1997).

I. SITE SUITABILITY CRITERIA

A site is suitable for a solid waste handling facility if it does not create substantial health and environmental hazards. DEP promulgates criteria for analyzing these risks, taking into consideration factors such as: the location or existence of any current or potential drinking water supplies; "the relationship of the site to groundwater elevations;" proximity to any wetlands, surface waters, or flood plains; proximity to, and density of, nearby residential areas; the availability and suitability of access roads; whether nearby sites have been used for solid waste disposal; potential adverse impacts on air quality; "the potential for creation of a nuisance from noise, windblown litter, or the proliferation of rodents, flies or other vermin;" any potential effects on health and public safety; any potential impact on agricultural lands, wildlife, or habitats; potential traffic increases; and the need and availability for solid waste disposal in the community. G. L. c. 111, § 150A½, as amended by

St. 1997, c. 19, § 21. Even if DEP, relying solely on the application, finds that the proposal satisfies its criteria, the local board of health must conduct a *de novo* proceeding to determine whether a site can actually be assigned. *RicMer Properties, Inc. v. Board Of Health of Revere*, 59 Mass. App. Ct. 173, 179 (2003). "By statute, the DEP's site suitability determination is not binding on the local board which must make an independent determination whether the proposed site complies with the criteria," *TBI, Inc. v. Board Of Health of North Andover*, 431 Mass. 9, 11-12 (2000), and "no site shall be deemed to be suitable where the impacts from the solid waste management facility will by itself, or in combination with impacts from other sources within the affected area, constitute a danger to public health or safety or the environment." 310 CMR 16.40(1)(a). Finally, "the applicant bears the burden of showing that the proposed facility meets the criteria." 310 CMR 16.40(1)(a)(2).

Here, Recycling contends that there was not substantial evidence to support the Board's determination that the proposed modification does not comply with DEP criteria. Therefore, the court will examine those criteria with which the Board found Recycling's proposal does not comply.

II. THE BOARD'S DETERMINATION

A. Was There Substantial Evidence that Impacts on Traffic would Threaten Public Health, Safety and the Environment?

1. The Board's Determination that Increased Truck Traffic would Create Congestion and Threaten Public Safety

To support its contention that an expansion of the facility's operations "will not have a significant impact on traffic operations within the study area" because its maximum permitted daily intake would not change (ABCD00388), Recycling relies on the traffic study submitted with its 2003 application for the original site assignment containing figures dating as far back as 1996. (ABCD00026). Recycling's assertion does not account for the fact that the facility has been operating at only five to seven percent of its capacity since it opened. (ABCD00085). The Board ordered a new traffic study to understand what impacts, if any, the proposed modification would have on traffic in the town (ABCD00031), and the new study showed that if Recycling operated at one hundred percent capacity, there would be a twenty-eight to fifty-eight percent increase in traffic through Ware at peak morning hours. (ABCD00257).

Recycling estimated that the bulk of the waste would be transported from the north on Route

32 and from the east on Route 9, thus avoiding the downtown area. (ABCD00082, ABCD00166). While Recycling had no market study research to support its estimation (ABCD00083), and could only speculate on any impact the modification would have on traffic (ABCD00166 - ABCD00168), the traffic study ordered by the Board showed that fifty-six percent of the waste would come to Recycling's facility from the south and west. (ABCD00278). The Board took specific note of DEP's "Active Facilities List"⁴ (Board's Decision, p. 4), which shows that area MSW landfills are located in Granby (west of Ware), Agawam, Chicopee, and South Hadley (south west of Ware), Northampton (north west of Ware), Sturbridge, and Southbridge (south east of Ware). (ABCD01077 - ABCD01082). As of May 2007, the Chicopee, Granby, and Northampton landfills were scheduled for closure in 2010; the South Hadley landfill was scheduled to close in 2008; and the Sturbridge and Southbridge landfills would close in 2016 and 2026, respectively. (*Id.*). Along with the traffic study, evidence that landfills to the south and west of Ware would close in the near future substantially supported the Board's determination that trucks carrying MSW to Recycling's facility would "travel through the densely populated center of Ware endangering public health, safety and the environment." (Bd., p. 4).

2. The Board's Determination that Harmful Emissions from Increased Truck Traffic would Threaten Public Health, Safety and the Environment

The Board found that: diesel exhaust "is estimated by EPA's National Scale Assessment to contribute to the human health risks in New England" by aggravating asthma and allergies and contributing to lung cancer; diesel exhaust is made up of small particles called "fine particulate matter" which "pose a serious health risk because they can easily pass through the nose and throat and lodge themselves in the lungs;" and that "[c]hildren are more sensitive to air pollution because they breathe at a faster rate than adults." (Bd., p. 4). Its finding that "the various fleets of diesel trucks delivering to, and exiting from, the facility may not be retrofitted or use cleaner burning fuels" (*Id.* at 5), was substantiated by evidence that even though Recycling would mitigate emissions from its stationary machines by installing catalytic converters and using ultra-low sulphur diesel fuel, it had no plan for mitigating emissions from the increased number of trucks (most without catalytic converters) traveling to and from its facility. (ABCD00122). While Recycling posits that it would

⁴ Issued by DEP in May 2007, and updated annually. (ABCD01077).

also mitigate emissions by limiting idling time to five minutes (ABCD00178 - ABCD00179), the Board could infer, based on evidence that Recycling's truck queuing area can accommodate up to ten trucks at one time (ABCD00009), that an increase in truck traffic would result in more non-retrofitted diesel trucks idling in the queuing area, overlapping five minute idling periods, and constant idling, which would increase the amount and concentration of harmful emissions.

The Board determined that emissions would not be reduced by Recycling's plan to conduct all waste processing and handling operations indoors. (ABCD00164). Assuming the facility was working at full capacity, evidence that six trucks would be entering and exiting the three-door building every ten minutes (ABCD00177), and that Recycling would vent "whatever odors, effluent air pollution, diesel fumes that are generated within the building" (ABCD00184), out into the open air (ABCD00288), provided substantial evidence to support the Board's finding that the modification would create a substantial risk to public health, safety and the environment from diesel emissions.

3. The Board's Determination that Increased Truck Traffic Using Alternate Routes would Create a Public Safety Risk

The Board received substantial evidence to support its finding that increased truck traffic on Routes 9 and 32 would threaten public safety because they are the main routes through Ware to Recycling's facility. (ABCD00254). Along these routes are a bridge over the Ware river and a railroad overpass, both slated for repair. (ABCD00203). Gilbert St. George-Sorel ("St. George-Sorel"), the Superintendent of Public Works, testified that repairs to the bridge would necessitate closure of either one or both of the bridge's lanes (*Id.*), which would divert traffic up Church Street to South Street, then onto Maple Street and Knox Avenue, back to Route 32. (*Id.*). St. George-Sorel testified that diverted traffic would also have to travel up Church Street to return to Route 32 if repairs to the railroad overpass require road closure. (*Id.*). School buses pick children up daily on each of these streets (ABCD00969 - ABCD00979), and along Church Street and East Street are a number of very old houses situated close to the road. (ABCD00202, ABCD00204). The Board had previously found that "[u]se of these residential streets by trash trucks creates a danger to residents, school children, pedestrians, and local traffic" (ABCD00999 - ABCD01005), and residents had previously complained that garbage trucks traveling to the Hardwick Landfill⁵ were so big that they

⁵ Hardwick Landfill, located 4.5 miles north of Recycling's site, closed in February 2007. (ABCD00416).

caused their houses on Church and East Streets to shake. (ABCD00217). This evidence, combined with testimony from Thomas Coloumbe ("Coloumbe"), the Ware Fire Chief, that any traffic increase on Routes 9 and 32 could hinder responders' ability to exit the fire station and that large trucks driving on narrow secondary roads are hazardous (ABCD00225), provided substantial evidence that trucks utilizing alternate routes to reach Recycling's facility would endanger public health and safety.

B. Was there Substantial Evidence that the Modification would Negatively Impact the Use and Enjoyment of Open Space?

A local board of health may not grant a site assignment "where such siting would have an adverse impact on the physical environment of, or on the use and enjoyment of" state forests, open space held for natural resource conservation, state or municipal parkland, MDC reservations,⁶ or conservation land. 310 CMR 16.40(4)(e).

Here, the Board determined that Recycling's acceptance of MSW would detract from the use and enjoyment of Grenville Park, Veteran's Memorial Park, and Reed Pool and Playground- town parks that either abut or are located on the traffic routes to Recycling's facility. (ABCD00194). While substantial evidence supported the Board's decision regarding Veteran's Park, evidence supporting its finding that the modification would impede the public's use and enjoyment of the other parks was weak. Nevertheless, the Board is entitled to deference because testimony from town officials, when considered in conjunction with evidence supporting its decision regarding Veteran's Park, provided substantial evidence to support the Board's determination.

1. The Board's Determination that the Modification would Interfere with the Use and Enjoyment of Veteran's Memorial Park

Veteran's Memorial Park is located on Main Street across from the Town Hall. (ABCD00193). John Carroll ("Carroll"), a Ware Parks Commissioner, testified that if Recycling were to accept MSW, "anyone sitting in the park will have to deal with the noise of the trucks, the diesel fumes and the odors of the rotting garbage." (ABCD00193). Paul Hills, Director of the

⁶ Metropolitan District Commission, which merged with the former Department of Environmental Management to become the Department of Conservation and Recreation ("DCR"). *Padden v. West Boylston*, 64 Mass. App. Ct. 120, 130 n. 3 (2005). DCR further consists of a Division of Parks and Recreation, G. L. c. 21, § 1, as amended by St. 2008, c. 451, § 33, which is responsible for designating, maintaining, and preserving open spaces in urban park districts for exercise and recreation. These open spaces are called "reservations." G. L. c. 93, § 33, as amended by St. 2003, c. 26, § 242.

Department of Community Development, agreed that from his Town Hall office he had personally observed garbage trucks being very loud. (ABCD00232). St. George-Sorel testified that, during the operation of Hardwick Landfill, the town experienced litter flying off the large, heavy trucks onto the roadway near Veteran's Park. (ABCD00202). This testimony provides substantial evidence to support the Board's finding that "[t]he handling and transfer of municipal solid waste is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, diesel vehicle emissions, nuisance dust, vibration and noise," all of which interfere with the public's use and enjoyment of Veteran's park. (Bd., p. 11).

2. The Board's Determination that the Modification would Interfere with the Use and Enjoyment of Grenville Park and Reed Pool and Playground

Grenville Park, which extends from Recycling's facility across the Ware River, is used by residents for activities such as fishing, boating, and summer programs for challenged teenagers. (ABCD00190 - ABCD00191). Recycling claims that its acceptance of MSW would not create nuisances at the park because of the facility's distance from Grenville Park and its planned mitigation measures. (ABCD00393). In 2007, GSE conducted a "Sound Level Impact Assessment" of noise at various locations including the park. The Assessment showed that noise was detectable from the C&D facility, vehicle traffic, and rail traffic (ABCD00675 - ABCD00692), but concluded that "the effect of offsite noise was minimal in GSE's opinion." (ABCD00687, ABCD00690). Carroll agreed that there was "not much of a problem with the noise" from the current facility, and that noticeable noise at the park is "sporadic." (ABCD00192). However, Carroll expressed concern that an increase in activity at Recycling could create more noise, which would be amplified by the water, and that noise from more vehicle and train traffic would disturb residents using the park. (*Id.*).

Carroll expressed similar concerns for residents' ability to use and enjoy Reed Pool Park and Playground, located on Route 9. (ABCD00194). He posited that increased truck traffic on Route 9 would endanger children and other patrons using the pool and ball fields because the sidewalk is located near the road. (*Id.*). However, upon questioning, Carroll acknowledged that his negative opinions and concerns over Recycling's proposed modification were not based on any documentation or expert analysis performed by himself or the Parks Commission. (ABCD00200).

Despite the lack of documentary evidence, the Board was entitled to conclude that the

modification would interfere with residents' use and enjoyment of town parks. See *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996)("In order to be supported by substantial evidence, an agency conclusion need not be based upon the "clear weight" of the evidence or even a preponderance of the evidence, but rather only upon "reasonable evidence," that is, "such evidence as a reasonable mind might accept as adequate to support a conclusion," after taking into consideration opposing evidence in the record")(internal citations omitted). The Board's finding that Keegan's testimony "with regards to his site visit at Grenville Park and his observations of the facility from the Park was not supported by credible evidence and was contrary to the personal knowledge of Board members and the Board's agent of the location of the riverfront within the Park, and its relationship to the facility" (Bd., p. 19), is entitled to deference. See *Cobble v. Commissioner of Dep't. of Soc. Serv.*, 430 Mass. 385, 391 (1999)("The substantial evidence test accords an appropriate degree of judicial deference to administrative decisions, ensuring that an agency's judgment on questions of fact will enjoy the benefit of the doubt in close cases").

3. Has Recycling Demonstrated that the Decision is Invalid or that it Suffered Prejudice?

Furthermore, Recycling has not satisfied its heavy burden of showing that the Board's decision is invalid. See *Attorney Gen. v. Department of Public Utilities*, 453 Mass. 191, 196 (2009); *Fitchburg v. Department of Telecommunications and Energy*, 440 Mass. 625, 631 (2004); *Massachusetts Inst. of Tech. v. Department of Public Utilities*, 425 Mass. 856, 867 (1997). The Board rejected Recycling's claim that the modification would not impact the town's parks. The inquiry does not end there, however, because "nonacceptance of testimony does not create substantial evidence to the contrary," *Salisbury Water Supply Co. v. Department of Public Utilities*, 344 Mass. 716, 721 (1962), and the Board's decision will not stand where "the cumulative weight of the evidence tends substantially toward opposite inferences." *Cobble*, 430 Mass. at 391. During the hearing, Keegan stated that he had done very little "to evaluate the impact of the proposed ABC&D facility on the use and enjoyment of these Town parks and natural resources." (ABCD00125). He testified that he had visited Grenville Park only once for 15 minutes (ABCD00123), and that he did nothing to determine what, if any, impact increased truck traffic would have on Veteran's Park or Reed Pool and Playground. (ABCD00124 - ABCD00125). Such testimony does not constitute

evidence which "tends substantially toward opposite inferences." *Cobble*, 430 Mass. at 391.

The Board was entitled to rely on its town officials who testified that, in their experience, garbage trucks inhibit residents' use and enjoyment of these parks. The Board could draw reasonable inferences based on the evidence presented before it, *Id.* at 390, and the fact that Keegan's testimony, if believed, would have supported Recycling's position does not entitle it to relief. *Duato v. Commissioner of Public Welfare*, 359 Mass. 635, 641 (1971). "The inferences drawn from the evidence in this case were largely matters of common experience and common sense, not matters of specialized or technical knowledge," and therefore the Board's decision may stand. *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 312 (1981).

C. Was There was Substantial Evidence that the Modification would Increase Emissions?

According to DEP regulations, "[n]o site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment." 310 CMR 16.40(4)(f). The Board must consider "the concentration and dispersion of emissions," whether there are sensitive populations nearby, and "the attainment status of the area." *Id.*

1. Compliance with Federal Air Quality Standards

The Board found Recycling's proposed air emission mitigation measures were inadequate to prevent the area from falling further out of compliance with federal air quality standards. John Blaisdell ("Blaisdell")⁷ and Keegan testified that in preparing the site suitability application, they neither measured emission levels from on-site equipment, nor calculated how much particulate matter trucks operating on-site would emit. (ABCD00130). They also failed to estimate the amount of particulate matter that trucks idling at, traveling to, and traveling from the facility would emit. (ABCD00131). Keegan and Blaisdell did not consider whether the combination of emissions from the facility, trucks, and the neighboring Ware CoGen power plant⁸ would exceed the Environmental Protection Agency's ("EPA") National Ambient Air Quality Standards in violation of the Clean Air

⁷ Also of GSE.

⁸ Ware CoGen, located within one mile of Recycling's facility, is a power plant wherein biomass such as wood and paper is burned and converted to gas. The gas is then burned to create electricity. (ABCD00061). As of February, 2008, the facility was not in operation. (ABCD00059).

Act. (ABCD00131). The Board's finding that town of Ware is currently located in an "8-Hour Ozone Non-Attainment Area"⁹ (Bd., p. 10) was supported by evidence that EPA classifies the region as such (ABCD01473), and there was substantial evidence that more trucks carrying MSW to Recycling's facility would create more emissions, which would push the area further from attaining National Ambient Air Quality Standards.

2. Concentration and Dispersion of Emissions

The Board heard evidence that Recycling's indoor waste handling and processing operations would involve six to twelve trucks idling within the confined space of the building (ABCD00178), and that "odors, effluent air pollution, [and] diesel fumes that are generated within the building" would be vented directly out into the air. (ABCD00288). Recycling stated that it would install a misting system equipped with a reservoir holding "concentrated odor counteractant chemical," but that it did not plan to install a negative air pressure system. (ABCD00053). In the September 21, 2007 Certificate of the Secretary of Energy and Environmental Affairs on the Notice of Project Change, Secretary Ian A. Bowles suggested that Recycling "consider the use of additional available technologies, including but not limited to the installation of a negative air pressure system with appropriate air pollution controls, to control dust and odor emissions from the proposed facility." (ABCD00868). Finding that Recycling had "failed to identify and consider the concentration and dispersion of emissions from the facility in consideration of the comments and encouragement of Secretary Ian A. Bowles," the Board determined that "[i]t will be necessary for the protection of public health and the environment from fugitive dust and particulate emissions, odors and windblown litter to . . . requir[e] negative air pressure be maintained within the building and the installation of more advanced odor control mechanisms." (Bd., p. 10).

Recycling could also mitigate air pollution by mandating that "[a]ll loads will be inspected for unacceptable material at the point of generation and while being tipped." (ABCD00516). However, Recycling explicitly stated that it would only inspect the minimum of five bags from eight trucks per month unless market conditions made it profitable to inspect more. (ABCD00089 -

⁹ The national 8-hour ambient air quality standard for ozone is 0.08 parts per million, which is the daily maximum 8-hour average. 40 CFR § 50.10(a)(1997). "Non-attainment" therefore means that average daily ozone levels exceed 0.08 parts per million.

ABCD00090). Blaisdell testified that Recycling would not inspect each bag to ensure that there were no banned materials. (ABCD00090). When asked how Recycling could know whether items containing asbestos, hazardous waste, radioactive waste, or medical waste were in a load if it did not inspect each bag, Blaisdell answered "I don't know." (ABCD00095). Keegan also testified that Recycling cannot know whether small amounts of hazardous waste, hidden within larger containers, are accepted at the facility unless each bag is inspected. (*Id.*). Finding that "[o]ther hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminants (sic) contained therein" (Bd., p. 11), the Board could infer that Recycling's limited inspection of incoming waste creates a higher potential for the release of harmful emissions from banned materials into the atmosphere.

D. Was There was Substantial Evidence that the Modification Would Increase Potential Nuisances?

A site may not be assigned "where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment." 310 CMR 16.40(4)(g). Noise, litter, vermin, odors, and birds are all potential nuisances. *Id.* A local board of health may "include in any decision to grant a site assignment such limitations with respect to the extent, character and nature of the facility or expansion thereof, as may be necessary to ensure that the facility or expansion thereof will not present a threat to the public health, safety or the environment." 310 CMR 16.20 (12).

In this case, the Board found that "[t]he transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions and truck idling, nuisance dust, noise and vibration and is a danger to the public health and environment." (Bd., p. 4). It therefore conditioned its approval of Recycling's application on the institution of more stringent mitigation measures to protect the town from such nuisances.

1. Noise

As previously noted, noise could be detected off-site from the C&D facility's operations and from vehicle and train traffic (ABCD00675 - ABCD00692), and the Board could infer that permitting Recycling to accept MSW would increase the noise because the number of large trucks

traveling to the facility during peak hours would increase by twenty-eight to fifty-eight percent. (ABCD00251). Moreover, the town had previously experienced noise nuisances from garbage trucks going to Hardwick Landfill. John Desmond ("Desmond"), a member of the Ware Board of Selectmen, testified that residents had complained to him in the past about loud garbage trucks and their jack brakes traveling down narrow residential streets, creating vibrations they could feel in their homes, on their way to the Hardwick Landfill. (ABCD00218 - ABCD00219). Thus, there was substantial evidence to support the Board's finding that Recycling's acceptance of MSW would create a "vibration and noise" nuisance from garbage trucks. (Bd., p. 11).

2. Odor and Litter

The Board's finding that "[t]he handling and transfer of municipal solid waste is accompanied by malodorous smells" (Bd., p. 11), was supported by testimony from Keegan that MSW has an "objectionable odor." (ABCD00072). David Kopacz, chairman of the Ware Conservation Commission, testified that he had personally detected odors from garbage trucks carrying MSW to Hardwick Landfill (ABCD00209), and that specific materials, such as bleach and diapers, had "a very noticeable odor." (ABCD00210). Desmond testified that he had received complaints from residents about the unpleasant smells from trucks carrying MSW to Hardwick Landfill. (ABCD00218). This testimony supported the Board's inference that Recycling's proposed mitigation techniques of deodorizing the waste with an indoor misting system (ABCD00073), cleaning the tipping floor (ABCD00401), and monitoring trucks when they arrive at the facility (ABCD00080), would not alleviate outdoor odors as trucks traveled through town to Recycling's facility. Therefore, the Board asked Recycling to install "ventilation equipment capable of maintaining negative air pressure, including during period[s] when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air." (Bd., p. 11).

The Board's finding that handling and transferring MSW is accompanied by "garbage truck spillage and leaks" was supported by testimony from St. George-Sorel that litter and debris would fall from garbage trucks hauling MSW to Hardwick Landfill (ABCD00202), and by evidence that trucks carrying MSW through town would not be sealed or airtight (ABCD00074), but would be covered only by a tarp. (ABCD00077). Recycling asserts that litter will be controlled because "all containers subjected to windy conditions will be properly covered and/or contained to the extent

practicable;" because staff will "inspect the facility daily for material which could disperse due to windy conditions" (ABCD00577); and because nonconforming loads where the truck is leaking or the coverings are defective will be rejected. (ABCD00078). However, the Board found that "the proposed pollution and nuisance reduction strategies . . . such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will traverse roads and travel past homes and municipal parkland to the facility and on the return trip out of the Town of Ware." (Bd., p. 5). Thus, the Board requested that Recycling institute and maintain a "Hot Line" wherein town residents could call to report nuisances to which Recycling would respond, and that Recycling sweep and clean all driveways, access roads, and paved areas of the facility, as well as all town roads leading thereto. (Bd., p. 22).

3. Vermin

The Board determined that "[t]he putrescible nature of municipal solid waste, and the offal contained therein, provides a food source and harborage of rodents, insects, gulls, and other pests which contribute to the creation or spread of disease." (Bd., p. 11). Recycling's testimony that if vermin would be found anywhere, "they would be on the over-the-road trailers off the site headed out of town" (ABCD00066), could support an inference that a vermin nuisance at the facility would threaten public health, safety and the environment because over-the-road trailers would carry the vermin directly through town when traveling from the facility. Although Recycling claims that contracting with an exterminator, installing rodent traps, conducting all waste handling activities indoors, and cleaning the tipping floor, will mitigate vermin nuisances by eliminating food sources (ABCD00400, ABCD00066), the Board determined it was necessary for Recycling to (1) retain an exterminator to inspect the facility weekly, and (2) remove all materials from the tipping floor daily, in order to protect the town from vermin infestation. (Bd., pp. 11, 12). And although Recycling states that there will be no problem with bird nuisances "given the completely closed operation" and the fact that "[n]o waste handling, loading, or unloading, or uncovering, will be allowed outside of the building" (ABCD00403), the Board was justified in requiring institution of a gull control program to protect neighboring properties and parks from potential bird nuisances. (Bd., p. 12).

E. Was There Substantial Evidence that the Modification Would Increase the Risk of Industrial Waste Water Contamination?

Substantial evidence supported the Board's finding that public health, safety and the environment would be threatened by the modification because "[s]torm water management control features and erosion control measures can fail during flood or fire events or from lack of maintenance." (Bd., p. 6).

Coloumbe testified that the combination of certain wastes either in the garbage truck or on the tipping floor can emit gases that create "hot loads," which are fire hazards (ABCD00224), and that, in his experience, firemen using the hose to put out a fire caused by a hot load expend approximately 125 gallons of water per minute. (ABCD00226). If such a fire occurred at the facility and took 15 minutes to extinguish, over 1500 gallons of water would come into contact with MSW and C&D, which would collect in the 1500 gallon tight-tank under the tipping floor. (ABCD00011). That water would be treated as industrial waste water, as "the constituents are likely to leach out of municipal solid waste or C&D." (ABCD00120). The Board heard evidence that, although catch basins able to hold up to 20,000 gallons of water are available, Recycling did not consider installing a larger one (ABCD00287), and that once the tight-tank reached its 1500 gallon capacity, excess water would move into a stone retention basin located downhill from the facility toward the river. (ABCD00286-ABCD00287). Because this secondary retention basin is not a tight-tank leak-proof pond (ABCD00287), the Board determined that public health, safety and the environment "should be protected from adverse impacts from the proposed solid waste management facility and/or any malfunctioning of its storm water control features which would result in discharge to the Ware River;" and that "the establishment of a monitoring program at the facility and of the Ware River in the immediate vicinity of the proposed solid waste management facility" was required. (Bd., p. 6).

III. RECYCLING'S MOTION TO STRIKE

Claiming that they were improperly included in the administrative record, Recycling asks the court to strike: (1) testimony and documents submitted by Kerri Pyke; (2) cross-examination by Judy Metcalf; (3) testimony by John Desmond, John Carroll, Jr., Gilbert St. George-Sorel, Thomas Coloumbe, David Kopacz, and Paul Hills; (4) testimony and documents submitted by Christopher Koehler; (5) documents submitted by Attorney Nicole Caprioli; (6) documents produced by the

Board and offered as exhibits; (7) "Administrative Notice Exhibits;" and (8) "Offer of Proof Only Exhibits."

It is the Board's duty to compile and file the administrative record, which consists of "(a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." G. L. c. 30A, § 14(4). In this case, the Board proposed that the record consist of only those documents it actually used to reach its decision to avoid the expense of transcribing, assembling, binding, printing and copying nearly 4,000 pages. The Board sought Recycling's input and approval for limiting the record by, for example, excluding documents marked for administrative notice but of which the Board never actually took such notice. Recycling, however, insisted that "the record can not be limited in any way from the entire package of documents that were marked as exhibits, introduced or otherwise referred to by any of the testimony- this includes ALL Admin. Notice documents not just those cited or referred to in the BOH Decision."¹⁰ In a formal letter dated June 12, 2008, Recycling further stated that, "[i]n the event that the Board of Health fails to appropriately produce the entire Administrative Record, including all so-called Administrative Notice Documents and all the original Site Assignment Application documents and supporting materials, then the Applicant shall have no alternative but to seek court intervention"¹¹ For Recycling to now ask the court to strike these same materials seems disingenuous at best. The court reviews the entire record, including materials reproduced at Recycling's insistence, while being cognizant of the various documents' role in the proceedings.

Even if Recycling was not precluded from objecting to the inclusion of these materials, its claim that testimony and cross-examination by town representatives was impermissible is invalid because, "[t]o the extent that there were any procedural deficiencies, they were inconsequential in view of the [town]'s obvious and overriding interest in the location of a waste disposal site within its borders" *RicMer Properties, Inc.*, 59 Mass. App. Ct. at 177. Recycling's claim that the Board impermissibly used outside consultants and experts is similarly invalid. See *Arthurs*, 383 Mass. at 310, citing G. L. c. 30A, § 11(5)("[a]n agency may introduce technical or specialized facts in the record through expert witnesses, or by taking official notice of facts").

¹⁰ Exhibit 1 attached to Defendant's Opposition to Plaintiff's Motion to Strike

¹¹ Exhibit 2 attached to Defendant's Opposition to Plaintiff's Motion to Strike

V. REMAINING ISSUES

Recycling's assertion that it was denied the right to examine and cross-examine witnesses can quickly be disposed of by examining the record. The remaining issues raised by Recycling in its motion for judgment on the pleadings and the Board in its opposition are addressed below.

A. Timeliness

Recycling claims that the Board's decision is void because it was issued more than forty-five days after the public hearing commenced, G. L. c. 111, § 150A; 310 CMR 16.30(10)(k)(1), and that the untimeliness constitutes a constructive approval of its application. Although the Board's decision was issued forty-eight days after the commencement of the hearing, the delay does not render its decision invalid. Nothing in G. L. c. 111, § 150A, states that the Board's failure to adhere to the forty-five day time limit constitutes a constructive approval of the site assignment application, and the Legislature would have specifically provided for such a result had it so intended. *Oyster Creek Preservation, Inc. v. Conservation Comm'n.*, 449 Mass. 859, 865 n. 11 (2007). Indeed, construing G. L. c. 111, § 150A, to lead to such a result "would require this court to read words into the statute that are not there." *Anderson Street Associates v. City of Boston*, 442 Mass. 812, 817 (2004).

Furthermore, Recycling waived its right to object to the decision's untimeliness by failing to raise it when it filed its notice of appeal. A waiver "may occur by an express and affirmative act, or may be inferred by a party's conduct, where the conduct is "consistent with and indicative of an intent to relinquish voluntarily a particular right [such] that no other reasonable explanation of [the] conduct is possible.'" *KACT, Inc. v. Rubin*, 62 Mass. App. Ct. 689, 695 (2004), quoting *Attorney Gen. v. Industrial Natl. Bank*, 380 Mass. 533, 536 n. 4 (1980). An implied waiver is "premised on clear, decisive and unequivocal conduct," *Id.*, and in civil cases where procedural rules and not constitutionally protected rights are involved, "a party may waive rights simply by failing to assert them." *Spence v. Reeder*, 382 Mass. 398, 411 (1981). Here, Recycling's failure to raise the issue of timeliness at its first opportunity to do so, and its own failure to adhere to statutory deadlines,¹² clearly and unequivocally reflect an "intent to relinquish voluntarily a particular right." *KACT, Inc.*,

¹² Pursuant to Superior Court Standing Order 1-96(4), Recycling was required to file its motion for judgment on the pleadings within thirty days of service of the record. The Board served the record on June 23, 2008, and Recycling filed its motion for judgment on the pleadings one hundred and forty-two days later, on November 12, 2008.

62 Mass. App. Ct. at 695.

B. Application Not Prepared by Professional Engineer

DEP requires that "[a]ll papers pertaining to the design, operation, maintenance, or engineering of a site or a facility shall be prepared under the supervision of a registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer." 310 CMR 16.08(5)(b). A professional engineer is "a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering, as attested by his registration as a professional engineer," G. L. c. 112, § 81D, as amended by St. 1958, c. 584, § 2, and "[w]hoever practices or offers to practice engineering . . . in the commonwealth without being registered" may be punished by a fine or imprisonment. G. L. c. 112, § 81T, as amended by St. 1958, c. 584, § 10. Only an engineer either qualified by the laws of the Commonwealth or working under another engineer so qualified may conduct engineering work. 250 CMR 3.05(9).¹³

Here, there was evidence before the Board that Keegan was not a registered professional engineer in Massachusetts,¹⁴ that the only Massachusetts license he possesses is "Wastewater Treatment Plant Operator Grade 6" (ABCD00290), that his college degree was in biology (ABCD00290), and that most of his experience has been working with solid waste handling and landfill facilities in Maine. (ABCD00289). The Board found that Keegan gave conflicting testimony that he had prepared the site suitability application (ABCD00052, ABCD00288), and that he had prepared the application under the supervision of Gary James, who is a licensed professional engineer in the Commonwealth. (ABCD00290). Based on this conflicting testimony and the fact that "[t]he Ware Board of Health finds only one document within the Site Assignment Modification Application, a map entitled "Site Plan" contains the seal and signature of Mr. Gary James" (Bd., pp.

¹³ A non-resident licensed to practice in their home state may become registered in Massachusetts without taking an examination. G. L. c. 112, § 81J(1)(a), as amended by St. 1970, c. 707, § 5. The non-resident must apply to the Board of Registration, however, and he/she "should file an application for a Temporary Permit" as well. 250 CMR 3.07(1). The applicant must be a registered professional engineer in his/her home state. 250 CMR 3.01(7).

¹⁴ He is a licensed professional engineer in Maine, and though he has resided in Massachusetts since 1999, Keegan did not begin "working on certification" in the Commonwealth until "just a few months" before the public hearing. (ABCD00289 - ABCD00291). He did not say whether or not he had obtained a temporary permit. (*Id.*).

17-18), the Board decided not to consider Keegan's testimony as that of an expert.¹⁵

"[F]ailure to register as a professional engineer is some evidence, which may be rebuttable," that a person is not qualified to give expert testimony. *Commonwealth v. Monahan*, 349 Mass. 139, 166 (1965). Keegan offered no evidence to rebut the Board's findings that he: is not a licensed professional engineer in the Commonwealth; does not hold a college degree in the field of engineering; lacks significant work experience in the design of enclosed MSW handling facilities in the Commonwealth; and most of his experience is with landfill design and closures in Maine. (Bd., p. 17). Thus, the Board's conclusion that, "[b]ased on the above findings of credentials, education, and work experience, the Board does not weigh Mr. Keegan's opinions and testimony as an expert, but rather as a lay person" (*Id.*), is entitled to substantial deference.¹⁶ *Vinal v. Contributory Retirement Bd.*, 13 Mass. App. Ct. 85, 101 (1982)(when findings "rest on the hearings officer's resolution of credibility questions . . . they should be entitled to substantial deference").

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the Board's determination is **AFFIRMED**. It is further **ORDERED** that Recycling's motion to strike is **DENIED**.

Dated: March 26, 2009
Entered: March 30, 2009



Mary-Lou Rup
Justice of the Superior Court

¹⁵ In fact, two maps in the 392-page application bear the seal of Gary James. (ABCD00698, ABCD00704).

¹⁶ With respect to Keegan presenting himself as a professional engineer and/or practicing engineering without being registered in the Commonwealth, the decision to pursue or impose civil or criminal penalties lies with the Attorney General or District Attorney, and not with this court. G. L. c. 112, § 81T.

EXHIBIT 4

NOTICE OF TRUST

KNOW ALL MEN BY THESE PRESENTS

THAT,

Pursuant to the registration procedures in effect in this state, notice is given that an Inter Vivos TRUST was established by instrument dated the 31ST day of MAY, 1996, in the jurisdiction of this court, known as THE O'RILEY FAMILY TRUST, by and between the Grantors and Trustees named below:

GRANTORS:

(1) Richard C. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

(2) Joan M. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

TRUSTEES:

(1) Richard C. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

(2) Joan M. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

RICHARD C. O'RILEY and JOAN M. O'RILEY, appointed initial trustees, expressly acknowledge and assume these duties as trustees dated this 31ST day of MAY, 1996.

Richard C. O'Riley
Grantor

Richard C. O'Riley
Trustee

Joan M. O'Riley
Co-Grantor

Joan M. O'Riley
Co-Trustee

COMMONWEALTH OF MASSACHUSETTS)

) ss.

COUNTY OF HAMPSHIRE)

On MAY 31, 1996, RICHARD C. O'RILEY and JOAN M. O'RILEY, Grantors and Joint Trustees of the trust estate created by the Declaration of Trust agreement dated MAY 31, 1996, came before me and acknowledged that the facts stated in the above Trust Notice are true as they believe.

My Commission Expires:

September 7, 2001

John P. Regish
Notary Public

JOHN P. REGISH
Notary Public
My Commission Expires Sept. 7, 2001

ATTEST: HAMPSHIRE, Marianne L. Donohue, REGISTER
MARIANNE L. DONOHUE



2004 00034848

Bk: 8066Pg: 30 Page: 1 of 2

Recorded: 11/18/2004 02:25 PM

TRUSTEE'S CERTIFICATE PURSUANT TO
CHAPTER 184, §35 OF THE
MASSACHUSETTS GENERAL LAWS

NAME OF TRUST: THE O'RILEY FAMILY TRUST

DATE OF TRUST: MAY 31, 1996

CERTIFICATION

I/We, RICHARD O'RILEY and JOAN O'RILEY, Trustee(s) of "THE O'RILEY FAMILY TRUST" Trust under Declaration of Trust dated May 31, 1996 (the "Trust"), between RICHARD O'RILEY and JOAN O'RILEY as settler and RICHARD O'RILEY and JOAN O'RILEY as original and current trustees, whose mailing address is 265 Upper Church Street, Ware, MA , certify as follow:

1. We are the current trustees of the Trust (the "Trustee(s)"),
 2. The named successor Trustees are as follows: COLLEEN O'RILEY-MUCHA and SEAN O'RILEY. ARTICLE XII of the Trust provides that during the lifetime of the grantor, RICHARD O'RILEY and JOAN O'RILEY , the grantor may appoint additional or successor trustees of the "Trust" ,
 3. Pursuant to ARTICLE II & VIII of the Trust, the Trustees have the authority and power to convey any interest in real estate and improvements thereon held in said Trust and to mortgage the same, and no purchaser, mortgagee or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the Trustee for a conveyance thereof,
 4. There are no facts which constitute a condition precedent to acts by the Trustee(s) or which are in any other manner germane to affairs of the Trust in connection with this conveyance,
 5. That either, RICHARD O'RILEY or JOAN O'RILEY, acting singly, are each authorized by the TRUST and the Trustees to sign any and all instruments necessary to effectuate a loan from Country Bank for Savings to ABC & D Recycling, Inc. (the "BORROWER") and the issuance of \$5,000,000 Massachusetts Development Finance Agency Revenue Bonds (ABC&D Recycling Inc. Project), which documents shall include a Guaranty by the TRUST of the indebtedness of BORROWER, and
 6. That there are no unrecorded amendments in connection with the TRUST.
-

Sworn to under the pains and penalties of perjury on this November 16, 2004.


RICHARD O'RILEY, Trustee

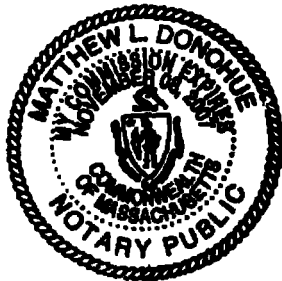

JOAN O'RILEY, Trustee

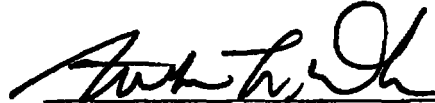
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

November 16, 2004

On this 16th 2004 before me, the undersigned notary public, personally appeared RICHARD O'RILEY and JOAN O'RILEY, proved to me through satisfactory evidence of identification, namely the person was [known to me, identified by affirmation of a credible witness, or identified in Mass Drivers Lic.], to be the persons whose names are signed on the preceding or attached document and acknowledged to me that such persons signed it voluntarily as such persons' free act and deed for its stated purpose.




NOTARY
PUBLIC
Expires: 11/15/07

ATTEST: HAMPSHIRE, , REGISTER
MARIANNE L. DONOHUE

EXHIBIT 5

EXHIBIT 6

D

KK
Examiner

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION

(General Laws, Chapter 156B)

WA
Name
Approved

ARTICLE I

The exact name of the corporation is:

ABC & D Recycling, Inc.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

To operate a Construction demolition recycling facility.

To borrow or raise money for any of the purposes of the Corporation, and from time to time, without limit as to amount, draw, make, accept, endorse, execute, and issue promissory notes, drafts, bills of exchange warrants, bonds, debentures, and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Corporation and to sell, pledge, or otherwise dispose of such bonds or other obligations of the Corporation for its Corporate purposes. In general, to carry on any other business in connection with the foregoing and to have and exercise all the powers conferred upon corporations by the laws of the Commonwealth of Massachusetts, and to do all and everything necessary, suitable, and proper for the accomplishment of any of the purposes or attainment of any of the objects herein set forth. Capital stock issued shall be the type as defined under Section 1244 of the Internal Revenue Code and shall be known as "Section 1244 Stock".

C ☐
P ☐
M ☐
R.A. ☐

5
P.C.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

ARTICLE III

State the total number of shares and par value, if any, of each class of stock which the corporation is authorized to issue.

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
Common:	2,000	Common:		
Preferred:		Preferred:		

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

None

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

See Attachment 5A

ARTICLE VI

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

None

****If there are no provisions state "None".**

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

ATTACHMENT 5A:

Any stockholder, including the heirs, assigns, executors, or administrators of a deceased stockholder, desiring to sell or transfer such stock owned by him or them shall first offer it to the Corporation through the Board of Directors in the following manner:

He shall notify the Directors of his desire to sell or transfer by notice in writing, which shall contain the price at which he is willing to sell or transfer and the name of one arbitrator. The Directors shall, within thirty days thereafter, either accept the offer, or by notice to him in writing, name a second arbitrator, and these two shall name a third. It shall then be the duty of the arbitrators to ascertain the value of the stock, and if any arbitrator shall neglect or refuse to appear at any meeting appointed by the arbitrators, a majority may act in the absence of such arbitrators.

After the acceptance of the offer, or the report of the arbitrators as to the value of the stock, the Directors shall have thirty days within which to purchase the same at such valuation, but if at the expiration of thirty days, the Corporation shall not have exercised the right so to purchase, the owner of the stock shall be at liberty to dispose the same in any manner he may see fit.

No shares of stock shall be sold or transferred on the books of the Corporation until these provisions have been complied with, but the Board of Directors may, in any particular instance, waive the requirements.

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a. The street address (*post office boxes are not acceptable*) of the principal office of the corporation in *Massachusetts* is:

198 East Street, Ware MA 01082

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:	Richard O'Riley	265 Upper Church St.	P.O. Box 719, Ware, MA 01082
Treasurer:	Joann O'Riley	265 Upper Church St.	P.O. Box 719, Ware, MA 01082
Clerk:	Sean O'Riley	8 Orchard St.	8 Orchard St., Acton, MA 01720
Directors:	Richard O'Riley	265 Upper Church St.	P.O. Box 719, Ware, MA 01082
	Joann O'Riley	265 Upper Church St.	P.O. Box 719, Ware, MA 01082
	Sean O'Riley	8 Orchard St.	8 Orchard St., Acton, MA 01720

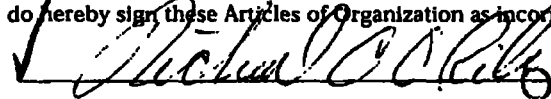
c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of: December

d. The name and business address of the resident agent, if any, of the corporation is: NONE

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address(es) are *clearly typed or printed* beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 25 day of May, 2004.



Note: If an existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

28507

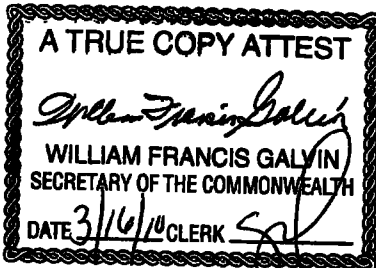
THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B)

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$ 275 having been paid, said articles are deemed to have been filed with me this 22 day of May 20 04.

Effective date: _____

885517



William Francis Galvin
WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

FILING FEE: One tenth of one percent of the total authorized capital stock, but not less than \$275.00. For the purpose of filing, shares of stock with a par value less than \$1.00, or no par stock, shall be deemed to have a par value of \$1.00 per share.

TO BE FILLED IN BY CORPORATION
Contact information:

John P. Regish
8 River Drive
Hadley, MA 01035
Telephone: 413-584-2941
Email: John@JohnRegish.com

A copy this filing will be available on-line at www.state.ma.us/sec/cor once the document is filed.

RECEIVED
MAY 27 11:21 AM
CORPORATION DIVISION
STATE OF MASSACHUSETTS

EXHIBIT 7

CERTIFICATE ISSUED

DATE \$2180.23

BUILDING PERMIT - CERTIFICATE OF OCCUPANCY

DATE DECEMBER 14, 2004

PERMIT NO. 5757

APPLICANT RICHARD O'RILEY

ADDRESS 265 UPPER CHURCH STREET OWNER

PERMIT TO CONST. STORAGE BLDG. 1 STORY

STORAGE

NUMBER OF DWELLING UNITS 0

AT (LOCATION) <u>198 EAST STREET</u>	ZONING DISTRICT
BETWEEN <u>AND</u>	
(CROSS STREET)	(CROSS STREET)

SUBDIVISION LOT BLOCK LOT SIZE FT. WIDE BY 180 FT. LONG BY 28 FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE SB USE GROUP STORAGE BASEMENT WALLS OR FOUNDATION CONCRETE

REMARKS CONST. BUTLER TYPE BUILDING

AREA OR VOLUME (CUBIC/SQUARE FEET)

OWNER RICHARD O'RILEY
ADDRESS 265 UPPER CHURCH STREET

☒ APPROVED

Michael J. Agnew 1/1/06



TO BE POSTED ON PREMISES
SEE REVERSE SIDE FOR ADDITIONAL CONDITIONS OF PERMIT

November 29, 2005

Michael Agnew
Building Inspector
Town of Ware
126 Main Street
Ware, Massachusetts 01082

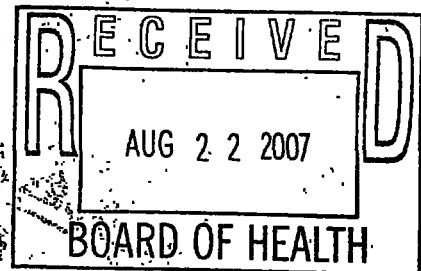
RE: ABC&D Recycling, LLC
198 East Street, Ware, MA
Building Permit Number 5757

I certify that the building located at 198 East Street
building permit number 5757 has been built under my
supervision and in accordance with the approved plans, and that such
plans do conform to all provisions of the Massachusetts State Building
Code.



Architect or Engineer Seal Bruce W. MacLeod
Signature

EXHIBIT 8



ABC&D RECYCLING, INC.

Site Suitability Application

Transmittal #W146097

August 2007

Prepared for:

ABC&D Recycling, Inc.
198 EAST STREET
WARE, MA 01082



Providing Innovative Solutions For . . .

- | | |
|--|--|
|  Solid Waste |  Health & Safety |
|  Hazardous Waste |  Environmental Monitoring |
|  Materials Management |  Compliance Outsourcing |

Main Office

28 Route 6A, Sandwich, MA 02563
Phone: (508) 888-6034 • Fax: (508) 888-1506

www.gseenv.com

New Hampshire Office

301 Daniel Webster Highway, Merrimack, NH 03054
Phone: (603) 424-3004 • Fax: (603) 424-3241



Enter your transmittal number

W146097

Transmittal Number

Your unique Transmittal Number can be accessed online: <http://mass.gov/dep/service/online/transmittal.shtm> or call MassDEP's InfoLine at 617-338-2255 or 800-462-0444 (from 508, 781, and 978 area codes).

Massachusetts Department of Environmental Protection**Transmittal Form for Permit Application and Payment**

1. Please type or print. A separate Transmittal Form must be completed for each permit application.

2. Make your check payable to the Commonwealth of Massachusetts and mail it with a copy of this form to: DEP, P.O. Box 4062, Boston, MA 02211.

3. Three copies of this form will be needed.

Copy 1 - the original must accompany your permit application. Copy 2 must accompany your fee payment. Copy 3 should be retained for your records.

4. Both fee-paying and exempt applicants must mail a copy of this transmittal form to:

MassDEP
P.O. Box 4062
Boston, MA
02211

* Note:
For BWSC Permits,
enter the LSP.

A. Permit Information

BWP SW 38

Site Suitability Major Modification

1. Permit Code: 7 or 8 character code from permit instructions

2. Name of Permit Category

Waste Handling & Processing

3. Type of Project or Activity

B. Applicant Information - Firm or Individual

ABC&D Recycling, Inc.

1. Name of Firm - Or, if party needing this approval is an individual enter name below:

2. Last Name of Individual

3. First Name of Individual

4. MI

198 East St.

5. Street Address

Ware

MA

01082

(413) 967-3110

6. City/Town

7. State

8. Zip Code

9. Telephone #

10. Ext. #

Richard C. O'Riley

abcdrecycling@verizon.net

11. Contact Person

12. e-mail address (optional)

C. Facility, Site or Individual Requiring Approval

ABC&D Recycling, Inc.

1. Name of Facility, Site Or Individual

198 East St.

2. Street Address

Ware

MA

01082

(413) 967-3110

3. City/Town

4. State

5. Zip Code

6. Telephone #

7. Ext. #

04-309-005

8. DEP Facility Number (if Known)

9. Federal I.D. Number (if Known)

10. BWSC Tracking # (if Known)

D. Application Prepared by (if different from Section B)*

Green Seal Environmental, Inc.

1. Name of Firm Or Individual

28 Rt. 6A

2. Address

Sandwich

MA

02563

(508) 888-6034

3. City/Town

4. State

5. Zip Code

6. Telephone #

7. Ext. #

Garrett Keegan

8. Contact Person

9. LSP Number (BWSC Permits only)

E. Permit - Project Coordination1. Is this project subject to MEPA review? ☒ yes ☐ no

If yes, enter the project's EOEA file number - assigned when an Environmental Notification Form is submitted to the MEPA unit:

12699

EOEA File Number

F. Amount Due**Special Provisions:**

- ☐ Fee Exempt (city, town or municipal housing authority)(state agency if fee is \$100 or less).
There are no fee exemptions for BWSC permits, regardless of applicant status.
- ☐ Hardship Request - payment extensions according to 310 CMR 4.04(3)(c).
- ☐ Alternative Schedule Project (according to 310 CMR 4.05 and 4.10).
- ☐ Homeowner (according to 310 CMR 4.02).

1980

\$1,565.00

August 15, 2007

Check Number

Dollar Amount

Date

DEP Use Only

Permit No:

Date:

Reviewer:



Massachusetts Department of Environmental Protection
Bureau of Waste Prevention – Solid Waste Management

**BWP SW 01 Site Suitability Report for a New Site
Assignment**

**BWP SW 38 Site Suitability for a Major Modification
of an Existing Site Assignment**

W146097

Transmittal Number

04-309-005

Facility ID# (if known)

Section I. General Information

Instructions. All Applicants should complete Part I.

A. Site Location and Project Description

Please provide the information requested.

- 1 Project name:

ABC& D Recycling, Inc.

Name of Project

2. Site address.

198 East St.

Street

Ware

City/Town

MA

State

01082

Zip Code

- 3 Type of facility:

☐ landfill

☐ combustion

☒ waste handling and processing

4. Total area of the site, including all buffer zones:

26.78

acres

5. Total area to be site assigned for solid waste activities:

8.9

acres

6. Capacity and expected life of proposed facility:

- a. State the maximum daily capacity of the proposed facility in tons per day. (This number should represent the maximum amount of waste to be accepted on any single day.):

750

tons per day

- b. State the average daily capacity of the proposed facility and describe how the average was computed:

708 tons/day

average daily capacity (tons per day)

750 tpd on weekdays and 500 tpd on Saturday

how average was computed



Massachusetts Department of Environmental Protection
Bureau of Waste Prevention – Solid Waste Management

BWP SW 01 Site Suitability Report for a New Site
Assignment

W146097

Transmittal Number

BWP SW 38 Site Suitability for a Major Modification
of an Existing Site Assignment

04-309-005

Facility ID# (if known)

A. Site Location and Project Description (cont.)

- c. State the yearly capacity of the proposed facility and, if the capacity is expected to change over the life of the facility, indicate the capacity in each year the proposed facility is expected to operate:

214,500

yearly capacity

Expected change in capacity (if applicable):

Expected yearly capacity

Year

_____	_____
_____	_____
_____	_____
_____	_____

- d. State the number of years the facility is expected to operate:

Indefinitely

years

- e. State the total lifetime capacity of the proposed facility:

Not limited, no disposal on site

total lifetime capacity

7. Type of Waste: What type of waste will be accepted at the proposed facility? (check all that apply)

- ☒ municipal solid waste
☒ construction and demolition waste
☐ industrial waste
☐ other, please specify: _____

8. Project Description: describe the proposed project:

ABC&D is proposing to modify an existing 750-ton per day (tpd) construction and demolition waste (C&D), handling and processing facility to also handle and process municipal solid waste (MSW). The overall 750-tpd capacity will remain unchanged, and no site alterations are proposed other than minor modifications to the waste handling building (addition of quick-close doors).



Massachusetts Department of Environmental Protection
Bureau of Waste Prevention – Solid Waste Management

BWP SW 01 Site Suitability Report for a New Site
Assignment

BWP SW 38 Site Suitability for a Major Modification
of an Existing Site Assignment

W146097

Transmittal Number

04-309-005

Facility ID# (if known)

B. Applicant Identification

1. Identify the owner of the site:

O'Riley Family Trust

Name

198 East St.

Street Address

Ware

City/Town

(413) 967-3110

Telephone

Richard C. O'Riley

Contact Person

MA

State

01082

Zip Code

(413) 967-3110

Contact Telephone

2. Identify the operator of the proposed facility if the owner has entered into an agreement with an operator:

ABC&D Recycling, Inc.

Name

198 East St.

Street Address

Ware

City/Town

(413) 967-3110

Telephone

Richard C. O'Riley

Contact Person

MA

State

01082

Zip Code

(413) 967-3110

Contact Telephone

C. Fees {16.08(4)}

1. Proof of Payment: Documentation must be submitted showing that the requirements for paying the Technical Fee to the Board of Health as per 16.08(4) have been satisfied.

Proof of payment may be either (please check which one you have provided):

☐ Document from the Board of Health stating that the Board of Health has waived the technical fee or that the Applicant has satisfied the Technical Fee payment requirements; or

☒ Receipt showing that the Applicant has paid the Maximum Technical Fee to the municipality.

Location of Attachment.

Attachment 1

section and/or page numbers



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C. Fees {16.08(4)} (cont.)

2. Amount of Maximum Technical Fee: Enter the Maximum Technical Fee as computed using Appendix A of 310 CMR 16.99:
\$32,020.60
Maximum Technical Fee

D. Collection Center for Household Hazardous Waste

Does the applicant intend to apply, pursuant to 310 CMR 30.190, for approval to operate a collection center for hazardous waste from households on the proposed site?

☐ Yes ☒ No

If "yes," the Applicant should contact the Permitting Section of the Bureau of Waste Prevention in the appropriate DEP Regional Office.

E. Declaration of Waiver Request {16.08(5)(c)}

1. Is a waiver from any of the site suitability criteria being requested under provisions of 310 CMR 16.40(6)? (If "yes," complete Part V.A. of this application form.)
☐ Yes ☒ No
2. Is a waiver from any of the requirements of Part I of 310 CMR 16.00 being requested under provisions of 310 CMR 16.18? (If "yes," complete Part V.B. of this application form.)
☐ Yes ☒ No

F. Massachusetts Environmental Policy Act (MEPA) {16.08(5)(d)}

Indicate which one of the following is attached to the application:

- ☐ Evidence that the project does not require MEPA review.
- ☐ Certificate from the Secretary of the Executive Office of Environmental Affairs stating that an Environmental Impact Report is **not** required.
- ☒ Evidence that the MEPA process does apply and the Secretary has determined that an EIR is required. (Note: The DEP will not complete its technical review of the application until the applicant submits the Certificate from the Secretary of the Executive Office of Environmental Affairs stating that the Final Environmental Impact Report is acceptable.)
- ☐ Certificate from the Secretary of the Executive Office of Environmental Affairs stating that the Final Environmental Impact Report is acceptable.



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F. Massachusetts Environmental Policy Act (MEPA) {16.08(5)(d)} (cont.)

Location of Attachment:

Section 1 Page 12. A Notice of Project Change has been prepared and will be submitted to the
MEPA office simultaneously with this Site Suitability Application.
section and/or page numbers

G. Wetlands Resources

1. Buffer Zone: Is any part of the proposed site located within 100 feet of any wetlands?

☐ Yes ☒ No

2. Riverfront Area: Is any part of the site located within a riverfront area?

☐ Yes ☒ No

3. Floodplain: Is any part of the proposed site located within a 100-year floodplain?

☐ Yes ☒ No

If the answer to question I.G.1, I.G.2 or I.G.3 is "yes," please describe what activities, if any, will occur
within the 100-foot buffer zone, the riverfront area or the 100-year floodplain.

Respond here or identify location of attached response:

Section 1 Page 13. The proposed modification to allow processing and handling of MSW will all take
place inside the existing building and will have no effect on the wetlands.
section and/or page numbers

4. Order of Conditions: Will an Order of Conditions under the Wetlands Protection Act (c.131, s 40) be
required?

☐ Yes ☒ No

5. Variance: Will a variance from the Wetlands regulations be required?

☐ Yes ☒ No



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H. Maps

1. Ground Water Contour Map: Has a ground water contour map for the site been developed?

☒ Yes ☐ No

If Yes, please attach the map and identify the location of the attachment:

Insert #4

section and/or page numbers

Please submit the following with the Application:

2. Locus Map: A US Geological Survey (USGS) topographic map of at least 8.5 x 11 inches in size (7.5 minute series scale) should be attached which clearly delineates the proposed site boundaries and shows all access roads to the proposed site.

Identify the attachment:

Insert #1

section and/or page numbers

3. Water Resources Site Plan: The following information regarding water resources should be indicated on a site plan (scale no larger than one inch equals two hundred feet) that covers the site plus a one-half mile extension in all directions from the site boundary. Please refer to the definitions at 310 CMR 16.02 for guidance on the meaning of the terms.

- All wetlands, associated buffer zones and riverfront areas as defined in 310 CMR 10.00
- All 100-year flood plains
- All surface water bodies (rivers, streams, ponds, lakes, reservoirs etc),
- All perennial streams draining to surface drinking water supplies,
- All private water supply wells
- All public water supply wells
- All or any fractions of Interim Wellhead Protection Areas (IWPA) or Zone II areas
- All or any fractions of Proposed Drinking Water Source Areas
- All or any fraction of a Zone A or B of a surface water supply

Identify the location of the attachment:

Insert #2

section and/or page numbers



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H. Maps (cont.)

4. Land Use Site Plan: The following information regarding land use should be indicated on a site plan (scale no larger than one inch equals two hundred feet) that covers the site plus a one-half mile extension in all directions from the site boundary:
- All wildlife management areas,
 - All Areas of Critical Environmental Concern (ACEC) as established by the Secretary of the Executive Office of Environmental Affairs (EOEA),
 - All lands actively devoted to agricultural or horticultural uses and lands classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service;
 - All of the Following Open Space Protected Areas:
 - state forests
 - state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution
 - MDC reservations
 - lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs
 - conservation land owned by private non-profit land conservation organizations that is open to the public
 - All residential dwellings on site and within 500 feet (1000 feet for landfills) of the property boundary,
 - All occupied commercial buildings within 500 feet of the property boundary,
 - All of the following
 - health care facilities
 - prisons
 - Elementary Schools
 - middle schools
 - high schools
 - children's' pre-schools
 - licensed day care centers
 - senior centers
 - youth centers
 - Other Solid Waste Facilities
 - All proposed waste handling areas on the site,
 - All proposed areas of waste deposition on the site,
 - All buildings and other facilities proposed on the site,
 - All access roads on the site and traffic flow off the site,
 - All abutting properties and their appropriate zoning designation (include any zoning abbreviations in plan legend).
 - The zoning designation of the proposed site.

Identify the location of the attachment:

Insert #3

section and/or page numbers



Section II. Facility Specific Criteria

Part II is divided into three sections. Complete only the appropriate section.

- II.A. Landfills
- II.B. Combustion Facilities
- II.C. Waste Handling and Processing Facilities

A. Landfills {16.40(3)(a)}

Complete Part II.A., if Site Assignment is sought for a landfill.

1. Zone II of Existing Public Water Supply {16.40(3)(a)1.}: Will any area of waste deposition be located within the designated Zone II area of an existing public water supply well?

☐ Yes ☐ No

Location of supporting information or comments:

section and/or page numbers

2. IWPA of Existing Public Water Supply {16.40(3)(a)2.}: If the Zone II of an existing public water supply well has not been determined, will any area of waste deposition be within the Interim Wellhead Protection Area (IWPA) as defined at 310 CMR 22.02?

☐ Yes ☐ No

If "Yes" see the note at Question II.A.4. and identify where additional information is attached:

section and/or page numbers

3. Zone II or IWPA of a Proposed Drinking Water Source Area {16.40(3)(a)3.}: Will any area of waste deposition be within the area of a Zone II or Interim Well Head Protection Area (IWPA) of a proposed drinking water source area for which the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR;

☐ Yes ☐ No

If "Yes" see the note at Question II.A.4. and identify where additional information is attached:

section and/or page numbers



A. Landfills {16.40(3)(a)} (cont.)

4. 15,000 Feet Upgradient of Existing Public Water Source Well or Proposed Drinking Water Source Area {16.40(3)(a)4.}. In instances where the Zone II has not been calculated, will any area of waste deposition be 15,000 feet or less hydraulically upgradient of an existing public water source well or proposed drinking water source area?

☐ Yes ☐ No

See the note and identify where additional information is attached:

section and/or page numbers

Note: If the answer to Questions II.A.2., 3, or 4 is "YES," the applicant may conduct and submit with this application a preliminary Zone II study, approved of by the Department, showing that the waste deposition area would be beyond the Zone II of the public water supply well or proposed drinking water source area in question. Alternatively, the applicant may prepare and submit, with this application, other evidence showing the well or proposed drinking water source area and the ground water under the proposed site are not hydraulically connected

The Applicant should consult with the DEP Drinking Water Program in the Bureau of Resource Protection prior to conducting a preliminary Zone II investigation to determine the scope of the investigation. At a minimum, the preliminary Zone II submittal should consist of:

- 1) A review and discussion of all available pertinent geologic and hydrologic data including bedrock and surficial geologic maps, hydrologic data reports and atlases, consultant reports, and pumping test reports;
 - 2) An estimate and orientation of the regional hydraulic gradient across the well site;
 - 3) A preliminary conceptual model of the aquifer, including a discussion of pertinent recharge and till boundaries; and
 - 4) A preliminary estimate of the Zone II area as defined in the Drinking Water Program's Water Supply Guidelines.
5. *Danger to existing or proposed drinking water source area {16.40(3)(a)5.}: State why a discharge from the facility would not pose a danger to any existing or proposed drinking water source area.*

Respond here or identify where the response is attached:

section and/or page numbers



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A. Landfills {16.40(3)(a)} (cont.)

6. Sole Source Aquifer {16.40(3)(a)6.}: Will any area of waste deposition be located within the recharge area of a designated sole source aquifer? (Sole Source Aquifers are designated by the US Environmental Protection Agency. To inquire as to whether a site is located above a Sole Source Aquifer contact the US Environmental Protection Agency, Region I, Ground Water Management Section.)

☐ Yes ☐ No

Identify location of attached information:

section and/or page numbers

If the answer to question II.A.6. is "yes," then the site is not suitable unless the criteria in 310 CMR 16.40(3)(a)6.a., b. and c. are met. Attach documentation showing that these criteria are satisfied.

Identify location of attached information:

section and/or page numbers

7. Zone of Contribution or Recharge Area {16.40(3)(a)7.}: Is any area of waste deposition within the zone of contribution of an existing public water supply or proposed drinking water source area, or the recharge area of a surface drinking water supply, pursuant to a municipal ordinance or by-law enacted in accordance with M.G.L. c. 40A, § 9?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

8. Zone A or B of Surface Drinking Water Supply {16.40(3)(a)8.}: Will any area of waste deposition be within the Zone A or Zone B of a surface water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers



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A. Landfills {16.40(3)(a)} (cont.)

9. Perennial stream draining to Surface Drinking Water Supply {16.40(3)(a)9.} Will any area of waste deposition be located within 400 feet upgradient, as defined by groundwater flow or surface water drainage, of a perennial water course that drains to a surface water supply that itself is within one mile of the waste deposition area?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

10. Potentially Productive Aquifer {16.40(3)(a)10.}: Will any area of waste deposition be within a Potentially Productive Aquifer?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If the answer to question II.A.10. is "yes," then the site is not suitable unless documentation is attached showing that either 16.40(3)(a)10.a.. b. or c. applies.

Identify location of attached documentation:

section and/or page numbers

11. Within 1000 feet Upgradient or Otherwise within 500 Feet of an Existing or Potential Private Water Supply Well {16 40(3)(a)11.}: Will any area of waste deposition be within 1000 feet upgradient, and where not upgradient, within 500 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☐ No

Identify location of supporting information or comments

section and/or page numbers



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A. Landfills {16.40(3)(a)} (cont.)

If the answer to question II.A.11 is "yes," attach documentation showing a valid option to purchase each such supply. Also indicate whether a replacement drinking water supply will be provided.

Identify the location of attached documentation:

section and/or page numbers

12. Four Feet Depth to Ground Water {16.40(3)(a)12.}: Will the maximum high ground water level under any area of waste deposition be less than four (4) feet below the lowermost level of the waste or, if a liner system is employed, four feet below the bottom of the lower most liner?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

- 13 Wetlands 16.40(3)(a)13.}: Will any area of waste deposition or any leachate containment structure be within any resource area, including the 100 year floodplain, protected by the Wetlands Protection Act?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

14. 400 Feet to a Lake or 200 feet to a Riverfront Area {16.40(3)(a)14.}: Will any area of waste deposition or any leachate containment structure be within 400 feet of a lake or within 200 feet of a Riverfront Area as defined in 310 CMR 10.00, that is not a drinking water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers



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A. Landfills {16.40(3)(a)} (cont.)

15. 1000 Feet to Various Occupied Facilities {16.40(3)(a)15.}. Will any area of waste deposition be within 1000 feet of any of the following (excluding equipment storage or maintenance structures):

- an occupied residential dwelling,
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's' pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If the answer to II.A.15. is "yes". attach documentation showing evidence of a valid option to purchase the facility in question.

Identify location of attached documentation:

section and/or page numbers

16. Ground water Protection System {16.40(3)(a)16.}: Will a ground water protection system be employed?

☐ Yes ☐ No

If a ground water protection system will be employed, describe the general features and components of the system which will prevent the migration of leachate and avoid adverse impact to the ground water.

If a ground water protection system will not be employed, demonstrate that the facility will not discharge leachate that presents a threat of adverse impact to ground water.

Identify location of attached explanation:

section and/or page numbers



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B. Combustion Facilities {16.40(3)(c)}

Complete Part II.B. if site assignment is sought for a combustion facility.

1. Zone I of Public Water Supply {16.40(3)(c)1.}: Will any waste handling area be within the Zone I of a public water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

2. IWPA or Zone II of Existing Supply or Proposed Drinking Water Source Area {16.40(3)(c)2.}: Will any waste processing area be within:

- a) the Interim Wellhead Protection Area (IWPA) of an existing public supply

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

- b) Zone II of an existing public water supply

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

- c) a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR,

☐ Yes ☐ No



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B. Combustion Facilities {16.40(3)(c)} (cont.)

Identify location of supporting information or comments:

section and/or page numbers

If the answer to all the above is "No," do not respond to the following and go on to section II.B.3. If the answer to any of the above is "Yes," respond to the following requests:

Supply information to demonstrate to the Department that the risk of an adverse impact to the ground water will be minimized.

Identify location of attached information:

section and/or page numbers

Supply information to demonstrate to the Department that at least one of the following is true:

- 1) The proposed facility cannot reasonably be sited outside the IWPA or Zone II.
- 2) If the site has been previously used for solid waste management activities, there would be a net environmental benefit to the ground water by siting the facility within the Zone II or the IWPA.

Identify location of attached information:

section and/or page numbers

3. Zone A of Surface Water Supply {16.40(3)(c)3.}: Will the waste processing area be within the Zone A of a surface water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers



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B. Combustion Facilities {16.40(3)(c)} (cont.)

4. Within 500 feet Upgradient or Otherwise within 250 Feet of an Existing or Potential Private Water Supply Well {16.40(3)(c)4.}: Will the waste processing area be within 500 feet upgradient, and where not upgradient, within 250 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If the answer to question II.B.4 is "yes," attach documentation showing a valid option to purchase each such supply. Also indicate whether a replacement drinking water supply will be provided.

Identify location of attached documentation:

section and/or page numbers

- 5 Two Foot Depth to Ground Water {16.40(3)(c)5.}: Will the maximum high ground water level be less than 2 feet below the surface in any waste handling or processing area?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If "yes," indicate how the project can be designed to maintain a two foot separation.

Identify location of explanation:

section and/or page numbers



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B. Combustion Facilities {16.40(3)(c)} (cont.)

6. 500 Feet to Various Occupied Facilities {16.40(3)(c)6.}: Will any waste handling or processing area be within 500 feet of any of the following (excluding equipment storage or maintenance structures):

- an occupied residential dwelling,
- health care facility
- prison.
- Elementary School
- middle school
- high school
- children's pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If the answer to II.B.6. is "yes". attach documentation showing evidence of a valid option to purchase the facility in question.

Identify location of attached documentation:

section and/or page numbers

7. Riverfront Area {16.40(3)(c)7.}: Will the waste handling area be within the Riverfront Area as defined at 310 CMR 10.00?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers



C. Waste Handling and Processing Facilities {16.40(3)(d)}

Complete Part II.C if site assignment is sought for a waste handling and processing facility (all facilities other than landfills and combustion facilities).

1. Zone I of Public Water Supply {16.40(3)(d)1.}: Will any waste handling area be within the Zone I of a public water supply?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2 p. 23, & Map Insert #2
section and/or page numbers

2. IWPA or Zone II of Existing Supply or Proposed Drinking Water Source Area {16.40(3)(d)2.}: Will any waste handling or processing area be within:

- a) the Interim Wellhead Protection Area (IWPA) of an existing public supply

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2 p. 23, & Map Insert #2
section and/or page numbers

- b) the Zone II of an existing public water supply

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2 p. 23, & Map Insert #2
section and/or page numbers

- c) a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR,

☐ Yes ☒ No



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C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

Identify location of supporting information or comments.

Section 1 p. 17, and Section 2. p. 23 & Map Insert #2
section and/or page numbers

If the answer to II.C.2.a. b and c is "No," do not respond to the following and go on to section II.C.3.
If the answer to II.C.2.a, b or c is "Yes," respond to the following requests.

Supply information to demonstrate to the Department that the risk of an adverse impact to the ground water will be minimized.

Identify location of attached information:

section and/or page numbers

Supply information to demonstrate to the Department that at least one of the following is true:

- 1) The proposed facility cannot reasonably be sited outside the IWPA or Zone II.
- 2) If the site has been previously used for solid waste management activities, there would be a net environmental benefit to the ground water by siting the facility within the Zone II or the IWPA.

Identify location of attached information:

section and/or page numbers

3. Zone A of Surface Water Supply {16.40(3)(d)3.}: Will the waste handling or processing area be within the Zone A of a surface water supply?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2 p. 23, & Map Insert #2
section and/or page numbers



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C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

4. Within 500 feet Upgradient or Otherwise within 250 Feet of an Existing or Potential Private Water Supply Well {16.40(3)(d)4.}: Will the waste handling or processing area be within 500 feet upgradient, and where not upgradient, within 250 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2 p. 23, & Map Insert # 3 and Section 1, p. 20 There is no residential property within 500 feet of the waste handling area.

section and/or page numbers

If the answer to question II.C.4 is "yes," attach documentation showing a valid option to purchase each such supply. Also indicate whether a replacement drinking water supply will be provided.

Identify location of attached documentation:

section and/or page numbers

5. Minimum Distances to Various Occupied Facilities {16.40(3)(d)5.}:

- a) Is the facility a transfer station using a fully enclosed storage system such as a compactor unit that proposes to receive less than or equal to 50 tons per day of solid waste

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 1. p. 5&6

section and/or page numbers

Note:
Respond to this question if the answer to question a) above is "Yes."

- b) Is the waste handling area 250 feet or less from any of the following (excluding equipment storage or maintenance structures)

- an occupied residential dwelling,
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's' pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☒ No



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C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

Identify location of supporting information or comments:

Section 1, p. 20 and Section 2, p.23 & Map Insert #3
section and/or page numbers

Note:
Respond to this
question if the
answer to
question a)
above is "No."

- c) Is the waste handling area 500 feet or less from any of the following (excluding equipment storage or maintenance structures)

- an occupied residential dwelling.
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's' pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 1, p. 20 and Section 2, p.23 & Map Insert #3
section and/or page numbers

6. Riverfront Area {16.40(3)(d)6.}: Will the waste handling area be within the Riverfront Area as defined at 310 CMR 10.00?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2, p. 23 & Map Insert #2
section and/or page numbers



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C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

7. Two Foot Depth to Ground Water {16.40(3)(d)7.}: Will the maximum high ground water level be less than 2 feet below the surface in any waste handling or processing area?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2, p. 23 & Map Insert #4

section and/or page numbers

If "yes," indicate how the project can be designed to maintain a two foot separation.

Identify location of explanation:

section and/or page numbers



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Section III. General Criteria {16.40(4)}

All applicants should complete all sections of Part III.

Note: When a response includes a description of a potential adverse impact, the applicant should describe both the qualitative and quantitative aspects of the potential impact.

A. Agricultural Land {16.40(4)(a)}

1. Does the site contain any land classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 25 & Map Insert #3

section and/or page numbers

2. Does the site contain any land deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 25 & Map Insert #3

section and/or page numbers

3. Will the facility be less than 100 feet from any land classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 25 & Map Insert #3

section and/or page numbers



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A. Agricultural Land {16.40(4)(a)} (cont.)

4. Will the facility be less than 100 feet from any land deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 25 & Map Insert #3
section and/or page numbers

B. Traffic Impacts {16.40(4)(b)}

1. ENF/EIR Accepted by MEPA

If the applicant prepared an Environmental Notification Form (ENF) to comply with the requirements of the Massachusetts Environmental Policy Act (MEPA), please attach all portions of the ENF that are relevant to traffic impacts. If the applicant was also required to submit an Environmental Impact Report (EIR) to comply with MEPA, please attach all portions of the EIR relevant to traffic impacts.

☒ ENF/EIR traffic impacts attached
☐ ENF/EIR not required

Identify location of attachments or comments:

Section 3, p. 25 and Attachment #7.
section and/or page numbers

2. ENF/EIR Not Required by MEPA

If no ENF or EIR was required to comply with MEPA, please provide the following information in an attachment:

- a) Maximum number of trips to the site per day by type of vehicle:
- b) Indicate, by vehicle type, the anticipated number of trips that will be made on each of the roads serving the facility.
- c) Identify any intersections, school zones, hospitals, or other locations on the roads serving the facility that may be adversely impacted by traffic accessing the site.



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B. Traffic Impacts {16.40(4)(b)} (cont.)

Identify the location of the attached information or comments

section and/or page numbers

C. Wildlife and Wildlife Habitat {16.40(4)(c)}

The Natural Heritage and Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife administers the programs dealing with the Wildlife and Wildlife Habitats referred to in these questions. The NHESP should be contacted to obtain the information and documentation needed to respond to the questions in this section.

The applicant must obtain a specific response from NHESP regarding the proposed site and attach the response to this application.

1. Habitat of Endangered, Threatened, or Special Concern Animal or Plant: Is the proposed site within the habitat of a state-listed Endangered, Threatened, or Special Concern animal or plant, as documented by the Natural Heritage and Endangered Species Program in its database?

☒ Yes ☐ No

Identify location of supporting information or comments:

Section 3, p. 27-28. Map Insert #3 and Attachment #8

section and/or page numbers

2. Ecologically Significant Natural Communities: Is the proposed site located in or adjacent to an area described on the most recent map of Ecologically Significant Natural Communities as documented by the Natural Heritage Program in its database?

☒ Yes ☐ No

Identify location of supporting information:

Section 3, p. 27-28. Map Insert #3 and Attachment #8

section and/or page numbers



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C. Wildlife and Wildlife Habitat {16.40(4)(c)} (cont.)

3. **Wildlife Management Area:** Is the proposed site located in an area adjacent to or with the potential to impact upon a Wildlife Management Area designated and managed by the Division of Fisheries and Wildlife?

☒ Yes ☐ No

Identify location of supporting information or comments:

Section 3, p. 27-28 and Map Insert #3
section and/or page numbers

Instructions: If the answer to any of the above questions (III.C.1., III.C.2. or III.C.3.) is "yes," and the proposed facility does have the potential to adversely impact one or more Endangered, Threatened, or Special Concern animals or plants or Wildlife Management Area, then answer questions III.C.4. and, if necessary, III.C.5. If the answer to each of the above questions (III.C.1., III.C.2. and III.C.3.) is "no," do not answer question III.C.4. or III.C.5.

4. **Adverse Impact on Habitat:** Will the proposed site have an adverse impact on the habitat of a state-listed Endangered, Threatened, or Special Concern animal or plant, Ecologically Significant Natural Community, or Wildlife Management Area, as determined by the Natural Heritage and Endangered Species Program? (Attach determination from NHESP.)

Identify location of supporting information or comments:

Exempt from MESA review by 310CMR 10.14(2). see Section 3, p. 27-28 and Map Insert #3
section and/or page numbers

Instructions: If the Natural Heritage and Endangered Species Program has determined there will not be an adverse impact, do not answer question III.C.5. If NHESP determined there is a potential for an adverse impact, respond to question III.C.5.

5. **Mitigation of Adverse Impacts:** If there is a determination by the Natural Heritage and Endangered Species Program that the proposed facility may potentially impact the habitat of a state-listed Endangered, Threatened or Special Concern animal or plant, Ecologically Significant Natural Community, or Wildlife Management Area, are there any reasonable mitigation measures the proponent may use to minimize or eliminate any adverse impacts?

☐ Yes ☐ No

If "no," then the site is unsuitable and the proposed facility shall not be sited.

If "yes," then with regard to this criterion the site may be assigned with conditions which will meet Division of Fisheries and Wildlife approval for mitigation of the adverse impacts. The mitigation measures proposed shall be appended to this application.



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C. Wildlife and Wildlife Habitat {16.40(4)(c)} (cont.)

Identify location of supporting information or comments:

section and/or page numbers

D. Areas of Critical Environmental Concern {16.40(4)(d)}

Programs for designating and protecting Areas of Critical Environmental Concern (ACEC) are administered by the Executive Office of Environmental Affairs (EOEA). EOEA should be contacted to obtain the information and documentation needed to respond to the questions in section III.D. Responses by EOEA should be appended to this application.

A specific response from EOEA is not required when EOEA's data show the site is not located near any ACEC.

1. Site Within ACEC: Is the proposed site located within the boundaries of an area designated as an Area of Critical Environmental Concern by the Secretary of EOEA?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 29 and Map Insert #3

section and/or page numbers

If the answer to question III.D 1 is "yes, the site is not suitable.

2. Site Adjacent to ACEC: Is the proposed site adjacent to an ACEC with the potential to impact the resources designated by the Secretary of EOEA as worthy of protection? (As defined in 16.02, "adjacent" may include areas not contiguous to the boundaries of the site.)

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 29 and Map Insert #3

section and/or page numbers



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D. Areas of Critical Environmental Concern {16.40(4)(d)} (cont.)

3. Mitigation Measures. If there is a determination by EOEa that the proposed facility may potentially adversely impact the ACEC, are there any reasonable mitigation measures the proponent may use to minimize or eliminate any adverse impacts?

☐ Yes ☐ No

If "no," the site is not suitable.

If "yes," then with regard to this criterion the site may be assigned with conditions which will meet EOEa approval for mitigation of the adverse impacts. The mitigation measures proposed shall be appended to this application.

Identify location of supporting information or comments:

section and/or page numbers

E. Protection of Open Space {6.40(4)(e)}

1. State Forests: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of state forests?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 30 and Map Insert #3

section and/or page numbers

2. State or Municipal Lands: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 30 and Map Insert #3

section and/or page numbers



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E. Protection of Open Space {6.40(4)(e)} (cont.)

3. MDC Reservation: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of MDC reservations?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 30 and Map Insert #3

section and/or page numbers

4. Lands Protected by EOE A Restrictions. Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of lands with conservation preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 31 and Map Insert #3

section and/or page numbers

5. Privately Owned Public Conservation Land: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of conservation land owned by private non-profit land conservation organizations and open to the public?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 31 and Map Insert #3

section and/or page numbers



F. Air Quality Impacts {16.40(4)(f)}

Instructions: If the proposed facility is a combustion facility, complete only section III.f.1. If the proposed facility is **not** a combustion facility, complete only section III.f.2.

1. Air Quality Impacts: Combustion Facilities

The Applicant shall, pursuant to the Air Pollution Control regulations, 310 CMR 7.02, submit a complete application to the Department for its review. The application shall be submitted on forms furnished by the Bureau of Waste Prevention. A copy of the permit application shall be appended to this application

In addition to the Air Quality Control application, the Applicant shall provide information on any populations within the area impacted by emissions from the facility which might be sensitive to the projected emissions from the facility. Information should include relevant health statistics for the impacted population.

Identify location of supporting information or comments:

section and/or page numbers

2. Air Quality Impacts: Non-Combustion Facilities

- a) Characterize the possible airborne emissions from the proposed facility. Include the composition and quantity of possible emissions. Indicate how these emissions are expected to vary over the life of the facility. Also characterize any other air emissions associated with the proposed facility such as emissions from vehicles.
- b) Demonstrate that the anticipated emissions from the facility will meet required state and federal air quality standards and criteria and otherwise will not constitute a danger to the public health, safety or the environment. Take into account the concentration and dispersion of emissions, the number and proximity of sensitive receptors and the attainment status of the area.

Identify location of supporting information or comments:

Section 3, p. 32-33 and Attachment #10
section and/or page numbers



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G. Nuisance Conditions {16.40(4)(g)}

For each of the following nuisance conditions that could occur during the construction and/or operation of the proposed facility, indicate the extent of the possible nuisance conditions and the measures that will be taken to mitigate or prevent the occurrence of the nuisance condition:

- Noise.
- Dust,
- Litter:
- Vectors such as rodents and insects.
- Odors,
- Bird hazards to air traffic. and
- Other nuisance conditions (please specify)

Identify location of supporting information or comments:

Section 3. p. 34-40
section and/or page numbers

H. Size of Facility {16.40(4)(h)}

Explanation: The information requested in this section is needed to determine whether the size of the site, considering access roads, areas for vehicles to wait before unloading, unloading facilities, storage areas, waste processing areas and pollution control equipment, is adequate for a facility with the proposed daily capacity.

1. Discussion: Discuss the waste delivery, unloading, and handling (including processing and storage) activities and pollution control equipment to demonstrate whether the size of the site is adequate to properly manage the proposed facility. Be specific with respect to the proposed capacity of the facility

Identify the location of supporting information or comments:

Section 3. p. 41-45
section and/or page numbers

2. 100 Foot Set Back: Will the waste handling area or deposition area be less than 100 feet from any property boundary except where the property boundary borders a separate solid waste management facility?

☒ Yes ☐ No



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H. Size of Facility {16.40(4)(h)} (cont.)

Identify location of supporting information or comments.

Section 3, p. 45
section and/or page numbers

I. Areas Previously Used for Solid Waste Disposal {16.40(4)(i)}

- 1 Previous Solid Waste Activities: Have the proposed site or any of the abutting properties been previously used for the legal or illegal disposal of solid wastes?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 46
section and/or page numbers

If "yes," please supply the following information and append to this application:

- a) Address: The address of the area previously used for the disposal of solid waste,
- b) Owner: The owner and the address of the owner of the area previously used for the disposal of solid waste,
- c) Dimensions: The dimensions of the area previously used for the disposal of solid waste,
- d) Status: Current status of the area previously used for the disposal of solid waste (e.g., active, inactive),
- e) Impacts on Site: The nature and extent to which the area previously used for the disposal of solid waste currently impacts or threatens to impact the proposed site,
- f) Impacts of Site: The nature and extent to which the proposed site may impact the area previously used for the disposal of solid waste,
- g) Combined Impacts: The nature and extent of any combined impacts from the area previously used for the disposal of solid waste and the proposed facility to public health, safety or the environment (Include factors such as ground water contamination and surface water runoff.),
- h) Mitigation: The extent to which use of the proposed site would result in mitigation of existing or potential impacts from the previously used site through remediation, closure or other activities.



I. Areas Previously Used for Solid Waste Disposal {16.40(4)(i)} (cont.)

Identify location of supporting information or comments:

section and/or page numbers

J. Existing Disposal Facilities {16.40(4)(j)}

- 1 Existing Disposal Facilities in Municipality: Are there any existing (active or inactive) disposal facilities (solid waste landfills or combustion facilities) in the municipality in which the proposed site is located?

☒ Yes ☐ No

Identify the location of supporting information or comments:

Section 3, p. 47

section and/or page numbers

2. Exclusive Use of Facility: Will the proposed facility be limited to the exclusive use of the municipality in which the proposed facility is to be sited?

☐ Yes ☒ No

Identify the location of supporting information or comments:

Section 3, p. 48

section and/or page numbers

Instructions: If the answer to III.J.1. is "yes" and the answer to III.J.2. is "no," please provide the information requested in III.J.3. Otherwise, go on to question III.K.

3. Existing Facility Identification: Provide the following information about the existing disposal facility or facilities in the municipality in which the proposed site is located:
- a) Existing facility identification (name, address, type of facility):
 - b) How much of the waste (tons/day) accepted at the proposed facility will be generated in the municipality in which the facility is located?
 - c) What percentage of the waste accepted at the proposed facility will come from the municipality in which the site is located?



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J. Existing Disposal Facilities {16.40(4)(j)} (cont.)

- d) Discuss to what extent the proposed facility meets the needs of the region in which the site is located.
- e) Explain to what extent the proposed facility incorporates recycling, composting and waste diversion (Refer to other responses, if appropriate.)

Identify the location where the information is attached:

Section 3, p. 48 and Section 4, p. 54
section and/or page numbers

K. Other Sources of Contamination or Pollution {16.40(4)(k)}

Attach an evaluation of whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment. taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department, and whether the proposed facility will mitigate or reduce those sources of pollution or contamination.

The Department has prepared a guidance document that describes how to make this evaluation. The document is titled. *Interim Risk-Evaluation Guidance Document for Solid Waste Site Assignment and Permitting in Support of 310 CMR 16.00 and 19.000* (first issued June 8, 2001). This guidance document, including its title, will be revised from time to time. Please contact the Department or visit the Department's web site to obtain the most recent version of the guidance document.

The applicant should contact the Department to discuss the scope of work prior to undertaking the evaluation.

Identify the location of the attached evaluation:

Attachment 10
section and/or page numbers



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Transmittal Number

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L. Regional Participation

- 1 Municipal Participation in Regional Disposal: Does the municipality in which the proposed site is located now participate in a regional disposal facility?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p 50

section and/or page numbers

Instructions: If the answer to question III.L.1. is "Yes," supply the information requested in question III.L.2. Otherwise, go on to part IV.

2. Proposed Facility Provide the following information about the proposed facility:

- a) How much of the waste (tons/day) accepted at the proposed facility will be generated in the municipality in which the facility is located?
- b) What percentage of the waste accepted at the proposed facility will come from the municipality in which the site is located?
- c) Discuss to what extent the proposed facility meets the needs of the region in which the site is located.
- d) Explain to what extent the proposed facility incorporates recycling, composting and waste diversion. (Reference other responses, if appropriate.)

Identify the location of the information or comments:

section and/or page numbers



Section IV. Integrated Solid Waste Management {16.40(5)}

Instructions: Complete Part IV only if site assignment is sought for a **Landfill or Combustion** facility.

It is likely that the information requested in Part IV will have been included in the EIR submitted to complete the MEPA process. If this is the case, the applicant should attach the relevant sections from the EIR that was accepted by the Secretary of EOE. If all the information requested below is not included in the EIR attach additional information.

In order to complete this section, the Applicant will need information on the Commonwealth's goals for recycling and composting and for establishing a statewide integrated solid waste management (ISWM) system. This information is contained in the Commonwealth's Solid Waste Master Plan which is available on the DEP's web site or by calling the DEP. The Master Plan is periodically revised and may be updated by issuing annual Status Reports, so it is important to make sure you have the current version before completing this application.

A. Capacity Need {16.40(5)(a)1.}

Demonstrate the need for the capacity that will be provided by the proposed facility. For each year of the expected life of the proposed facility identify the sources (residential, commercial, industrial) of the solid waste that will supply the amount of waste equal to the proposed capacity. Please be as specific as possible in identifying "sources." Include the municipalities in which the waste will be generated and the type of waste (demolition/construction, wood waste, sludge, ash, special wastes, commercial wastes, household wastes, etc.).

Show how the capacity that will be provided by the proposed facility will contribute to providing the capacity needed by the Commonwealth as identified in the most recent Solid Waste Master Plan and/or most recent annual Status Report.

B. Waste Diversion {16.40(5)(a)2.}

Explain how the proposed facility will maximize the diversion of recyclable and compostable materials from the waste prior to combustion or landfilling. Include a discussion of how the proposed facility will coordinate with other facilities or programs to maximize the diversion.

C. Contribution to ISWM {16.40(5)(a)3.}

How will the proposed facility contribute to the establishment and maintenance of a statewide system for integrated solid waste management? Include a discussion of how the proposed facility will complement the other facilities in the service area.



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D. Recycling and Composting {16.40(5)(b)}

Explain to what extent the proposed facility itself incorporates recycling and composting and explain how the proposed facility will be integrated into the recycling and composting activities in the service area.

Identify the location of the information requested in Part IV:

Section 4, p. 51-53

section and/or page numbers



Section V. Waivers

A. Site Suitability Criteria Waiver {16.40(6)}

The Site Suitability Criteria Waiver Application should be completed only if the applicant is seeking a waiver from one or more of the Site Suitability Criteria set forth in the Site Assignment Regulations, 310 CMR 16.40(3) or the setback distance at 310 CMR 16.40(4)(h). (The intention to seek a waiver must be noted in Part I of the Site Assignment Application Form.)

Note: As required by 310 CMR 16.08(5)(c), an application for a waiver must be accompanied by all data and documentation necessary to support the waiver request.

☐ Check here if a waiver from the Site Suitability Criteria is requested.

Identify the location of the information requested in V.A.1 through V.A.9:

section and/or page numbers

1. Criteria: Identify the Site Suitability Criteria in 310 CMR 16.40(3) or 310 CMR 16.40(4)(h) from which a waiver is sought and for each explain the nature of the waiver being requested.
2. Hardship: State the nature of the hardship which would result if a waiver were not granted.
3. Interest Served: State the community, regional or state public interest that would be served by granting the waiver.
4. Maintain Protection: Explain why granting the waiver will not result in less protection of the public health and safety and the environment than would exist in the absence of the waiver.
5. Alternative Site: Explain why the proposed facility cannot be located at another site in the affected municipality or region at which a waiver would not be needed.
6. Preferred Municipality: Is the proposed site located in a preferred municipality as defined in MGL c.111, s. 150A1/2? (A "preferred Municipality" is a municipality that does not have existing disposal facilities and is not part of a regional waste disposal district.)
7. Environmental Benefit: Will granting the waiver result in any environmental benefits in excess of those benefits achievable in the absence of a waiver? Explain.
8. Integrated Solid Waste Management: Explain how the proposed facility contributes to integrated solid waste management.
9. Waiver Needed for Project Goals: Explain why the solid waste management objectives of the proposed project could not be achieved in the absence of the waiver.

Assignment:

BWF SW 03 Site Suitability for a Major Modification
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E. Waiver from Application Process (16.18)

This waiver application should be completed only if the applicant is seeking a waiver from one or more of the provisions of Part I (310 CMR 16.01-16.19) of the Site Assignment Regulations that deals with the application process. (The intention to seek a waiver must be noted in Part I of the application form.)

Note: As required by 310 CMR 16.08(5)(c), an application for a waiver must be accompanied by all data and documentation necessary to support the waiver request.

☐ Check here if a waiver from the Application Process is requested.

Identify the location of the information requested in V.B.1 through V.B.4.

1. **Regulatory Provision:** Identify the provision of the regulations from which a waiver is being requested and explain the specific nature of the request.
2. **Interest Served:** State the community, regional or state public interest that would be served by granting the waiver.
3. **Interference with Suitability Evaluation:** State why the granting of the waiver would not interfere with the ability of the Board of Health to evaluate the Suitability of the proposed site.
4. **Public Review and Comment:** State why granting the waiver would not diminish the ability of the general public to review and comment on the proposed project.



SWP SW 01 Site Suitability Report for a New Site
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W-1400

Transmittal Form

SWP SW 38 Site Suitability for a Major Modification
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(14-305-00)

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VI. Signatures and Certification {16.08(5)(e)}

A. Land Owner's Signature

Where the applicant is not the owner of the legal title to the land described as the "site" in this application, the owner or other person with control of the site pursuant to an order of a court of competent jurisdiction shall sign the application here

Cheryl Family Trust
Owner's Signature
Michael C. Dwyer
Date 8/15/07

B. Applicant's Signature and Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment.

ABCO Recycling Inc.
Applicant's Signature
8/15/07
Date
Michael C. Dwyer
Agent's Signature
8/15/07
Date

EXHIBIT 9

March 16, 2010 Document includes twenty-two (22) pages of records on file in the Office of the Board of Health, Ware, MA

A true copy attests:


Nancy J. Talbot - Town Clerk, Ware, MA

Application for Site Assignment Modification
ABC&D Recycling, Inc.
198 East Street
Ware MA
DEP DSWM File # 07-309-005
Town of Ware
Board of Health
Decision

The Ware Board of Health duly voted on February 21, 2008, after holding the requisite Public Hearing pursuant to 310 CMR 16.20 which commenced on January 8, 2008 and continued to its conclusion on February 13, 2008, to issue the following findings, conditions, and decision regarding the site assignment modification application, pursuant to MGL Ch. 111, sec. 150A and the subsequently promulgated regulation 310 CMR 16.00, for ABC& D Recycling, Inc. at 198 East Street Ware, MA, 01082:

1. With regards to the prohibition that no waste handling or processing area be located within the Zone 1 of a public water supply well as set forth in 310 CMR 16.40 (3) (d) (1); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*
2. With regards to prohibition that no waste handling or processing area be located within the Interim Wellhead Protection Area (IWPA) or a Zone II of an existing public water supply well, within a processed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form as set forth in 310 CMR 16.40 (3) (d) (2); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*
3. With regards to the prohibition that no waste handling or processing area be located within the Zone A of a surface drinking water supply as set forth in 310 CMR 16.40 (3) (d) (3); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*
4. With regards to the prohibition that no waste handling or processing area be located within five hundred (500) feet upgradient, and where not upgradient, within two hundred fifty (250) feet, of an existing or potential private drinking water supply well existing or established as a Potential Private Water Supply at the time of submittal of the application, provided, however, the applicant may show a valid option to purchase the restricted area

including the well and guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment as set forth in 310 CMR 16.40 (3)(d) (4); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

5. With regards to whether waste handling area of any transfer station or handling facility that proposes to receive more than 50 tons per day of solid waste would be within five hundred (500) feet of an occupied residential dwelling, prison, health care facility, elementary school, middle school or high school, children's pre-school, licensed day-care center, or senior center or youth center, excluding equipment storage or maintenance structures as set forth in 310 CMR 16.40 (3) (d) (5) (i); *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the transfer station and handling facility proposes to receive more than 50 tons per day of municipal solid waste in addition to construction and demolition waste. The Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that portions of the property of the facility are less than 500 feet from residential dwellings, but the active area proposed for the transfer station and waste handling facility will be located at 500 feet or more from residential dwellings. The Ware Board of Health therefore finds the site meets the above- stated criteria.*

6. With regards to whether the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00 as set forth in CMR 16.40 (3) (d) (6); *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that while portions of the property on which the facility is located is within the Riverfront Area of the Ware River, the active waste handling area is not within the Riverfront Area as defined. The Ware Board of Health therefore finds the site meets the above- stated criteria.*

7. With regards to whether the maximum high groundwater table would be within two (2) feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two (2) foot separation can be designed to the satisfaction of the Department as set forth in 310 CMR 16.40 (3) (d) (7); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

8. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where:

1. The land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service;
or
2. The land is deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and

3. A 100 foot buffer would not be present between the facility and those lands as classified at 310 CMR 16.40(4) (a) 1 or 2 as set forth in 310 CMR 16.40(4) (a); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

9. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:

1. Traffic congestion;
2. Pedestrian and vehicular safety;
3. Road configurations;
4. Alternative routes; and
5. Vehicle emissions, as set forth in 310 CMR 16.40 (4) (b).

The Board of Health heard evidence that:

- (1) Trucks hauling MSW through the East Street, Main Street, West Main Street, and West Street areas will be proceeding at slow speeds with numerous stops.
- (2) Trucks hauling MSW through the East Street, Main Street, West Main Street, and West Street areas will be traversing heavy pedestrian traffic areas.
- (3) Slow moving MSW truck traffic through East Main Street, Main Street. West Main Street and West Street will subject pedestrians, residents, businesses, etc. to odor, leakage, litter and other nuisance issues.
- (4) The traffic study indicates that the crash rate at two Main Street intersections already exceeds state wide and district wide averages
- (5) Increases of MSW traffic during peak hours of up to 58% will make these Two Main Street intersections less safe and more crash prone.
- (6) Use of MSW trucks of school bus routes will expose school children to increased traffic hazards at school bus stops and while on buses traveling these routes.
- (7) Increased MSW traffic will result in increased diesel emissions, MSW odors, MSW leakage, MSW litter and attendant vermin, all exposing residents and school children to health and safety risks.

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds:

- I. *The putrescent nature of municipal solid waste provides a food source and harborage of rodents, insects and other pests of public health importance which contribute to the creation or spread of disease.*
- II. *Other hazardous and dangerous components and contaminates which may be present in the municipal solid waste stream poses a risk due to fire, burns, accidents*

- or other dangers or impairments to health and safety.*
- III. The transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions and truck idling, nuisance dust, noise and vibration and is a danger to the public health and environment.*
 - IV. The MSW trucks routes will be along densely populated areas of the Town of Ware with older homes set at or very near the roadway and sidewalks. The Ware Board of Health also takes notice that many of these same densely populated neighborhoods are designated as an "Environmental Justice Population" by the Executive Office of Environmental and Energy Affairs, the MSW trucks will be a danger to the public health, safety, and environment.*
 - V. The rate of traffic accidents at key intersections - West Main/West/ Main and Main/North- along the anticipated MSW truck routes exceed MASS Highway District and statewide averages (HSH page 20).*
 - VI. Truck traffic will increase by 28%-58% along all segments of Main, East Main, and East Street (HSH page 1) at peak morning hours and will be a danger to public safety.*
 - VII. School bus routes, pick-up and drop off locations coincide with anticipated MSW trucks routes and the MSW truck routes will be a danger to school children and school buses.*
 - VIII. Anticipated truck routes were determined by standard engineering practices utilizing the best information available at the time of the application submittal and public hearing process.*
 - IX. With specific note to population distribution of the region and the DEP document entitled " Active Facilities List" which lists anticipated closure dates of area solid waste disposal facilities located to the south and west of Ware, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds logical and reasonable the conclusion of the traffic report prepared by Howard-Stein/ Hudson that 66% of trips to the facility will originate from points west and south (HSH page 29) and therefore travel through the densely populated center of Ware endangering public health, safety, and the environment.*
 - X. Diesel exhaust is commonly found throughout the environment and is estimated by EPA's National Scale Assessment to contribute to the human health risk Diesel exhaust is composed of two phases, either gas or particle and both phases contribute to the risk. Diesel particulate matter is part of a complex mixture that makes up diesel exhaust. It is made up of small particles, known as fine particulate matter. Fine particles pose a serious health risk because they can easily pass through the nose and throat and lodge themselves in the lungs. When inhaled repeatedly, the fine particles in diesel exhaust may aggravate asthma and allergies or cause other serious health problems including lung cancer. Diesel exhaust is estimated by EPA's National Scale Assessment to contribute to the human health risk in New England. EPA has classified diesel particulate matter as a likely human carcinogen. Children are more sensitive to air pollution because they breathe at a faster rate than adults. Massachusetts has childhood asthma rates above 10 percent. (Health Effects | Diesel Exhaust | New England | US EPA). Therefore, MSW trucks will endanger public health, safety, and the environment.*
 - XI. With specific regards to the public health impacts of the diesel engine emissions,*

the reduction of emissions for existing diesel engines include the utilization of strategies such as the use of cleaner fuels, and retrofitting and repairing existing fleets. While the proponent provides such reduction strategies for "off road" vehicles and equipment owned and operated at the facility, the various fleets of diesel trucks delivering to, and exiting from, the facility may not be retrofitted or use cleaner burning fuels.

- XII. With specific regards to transportation of municipal solid waste, the proposed pollution and nuisance reduction strategies advocated by the proponent and his representatives, such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will transverse roads and travel past homes and municipal parkland to the facility and on the return trip out of the Town of Ware.*
- XIII. The applicant did not work with the Town of Ware officials and local residents within the project area to establish haul routes and mitigate impacts as encouraged and directed in the September 21, 2007 Certificate of the Secretary Of Energy and Environmental Affairs on the Notice of Project Change signed by Ian A. Bowles (NPC Certificate 09/21/07 page 2) .*
- XIV. The applicant and representatives rejected working with the Town of Ware officials to schedule operations around bus routes and/or to stagger deliveries to, and exits from, the facility to mitigate congestion and idling, potential for increased accidents at cited intersections, and safety concerns of children waiting, embarking, or exiting school buses.*

In consideration of the above findings, and after due deliberations, the Board finds the siting of this waste handling facility receiving municipal solid waste would constitute a danger to the public health, safety, or the environment taking into consideration traffic impacts from the facility operation including the following factors:

1. Traffic congestion;
2. Pedestrian and vehicular safety;
3. Road configurations;
4. Alternative routes; and
5. Vehicle emissions.

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

10. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:

1. Have an adverse impact on Endangered, Threatened, or Special Concern species listed by the National Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
2. Have an adverse impact on an Ecologically Significant Natural Community as documented by the National Heritage and Endangered Species Program in its database; or
3. Have an adverse impact on the wildlife habitat of any state Wildlife Management

Area, as set forth in 310 CMR 16.40(4) (c).

The Ware Board of Health, based on the record of the public hearing and utilizing The experience, technical competence, and specialized knowledge of the Board and its Agents, finds:

- I. The putrescent nature of municipal solid waste as well other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein.*
- II. Storm water management control features and erosion control measures can fail during flood or fire events or from lack of maintenance.*
- III. With specific reference to the letter from Division of Fisheries and Wildlife dated September 5, 2007 that the Ware River immediately adjacent to ABC&D Recycling Inc. is a priority habitat and estimated habitat for the following rare species: Triangle Floater Mussel, Creeper Mussel, the endangered Spine-crowned Clubtail Dragonfly, and Wood Turtle.*
- IV. These Endangered, Threaten, or Special Concern species should be protected from adverse impacts from the proposed solid waste management facility and/or any malfunctioning of its storm water control features which would result in discharge to the Ware River; and to do so requires the establishment of a monitoring program at the facility and of the Ware River in the immediate vicinity of the proposed solid waste management facility.*

The Ware Board of Health therefore finds the site would meet the above stated criteria only with the imposition of the following conditions, which it finds necessary to ensure the facility will not present a threat to the environment:

- 1) The owner and/ or operator shall maintain all storm water management/ control features and mechanisms as designed and in operational condition. Twice annually, once in Spring and then once again in the Fall , but at times when there is no snow cover which could hinder or hide from view a complete inspection, the owner and/or operator shall have performed a thorough inspection of all drains and drainage ways, catch basins, detention and/or retention basins by a licensed civil engineer; perform any maintenance or repairs as needed; and within thirty (30) days submit a written report of the inspection findings and actions taken to the Ware Board of Health and the Ware Conservation Commission.
- 2) At any time during the year, the owner and/or operator shall immediately report to the Ware Board of Health and the Ware Conservation Commission any failure of the storm water management system at the facility site to adequately retain and or treat storm water or a significant erosion occurrence at the facility site within 24 hours of the event.
- 3) The owner and/or operator shall retain the services of a competent, independent third party professional qualified to conduct an adequate biological evaluation and monitoring program of the Ware River in the immediate vicinity of the solid waste management facility. The program shall at a minimum include, but shall not be limited to, five sample sites- one being immediately upstream from the facility and

one other immediately downstream. The water samples shall be analyzed for, but shall not be limited to: Turbidity, nitrogen, phosphorous, dissolved oxygen, BOD, COD, as well as an assessment of the microorganisms in the water such as zooplankton and phytoplankton. In addition sediment samples shall be taken and analyzed for metals, polychlorinated biphenyls (PCBs), and polynuclear hydrocarbons (PAHs). Such analysis shall be performed by a certified laboratory. In addition, the program shall include the evaluation and monitoring of the vegetative growth and bank stabilization status along the banks and cove of Ware River where it serves as the property line boundary for the facility. Such monitoring shall be performed twice annually for the first five years of the facility's acceptance of municipal solid waste and thereafter once annually provided the initial five year testing results reveal no discernable negative impacts. Monitoring and evaluation results, including laboratory reports and chain of custody documentation, shall be provided to the Ware Board of Health and Ware Conservation Commission in written format within thirty (30) days of completion twice annually or once annual as set forth in the terms above.

11. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:

1. Would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or
2. Would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC; as set forth in 310 CMR 16.40(4) (d);

the Ware Board of Health, based on the record of the public hearing and information contained in the application, finds the site meets the above- stated criteria. However, the Ware Board of Health took notice that while the site is not located within an ACEC, it is within 1 mile and 5 miles respectively of an Environmental Justice Area as designated by EOEEA.

12. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have adverse impact on the physical environment of, or on the use and enjoyment of:

1. State forests;
2. State or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution;
3. MDC reservations;
4. Lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or
5. Conservation land owned by private non-profit land conservation organizations and open to the public; as set forth in 310 CMR 16.40(4) (e).

The Ware Board of Health heard evidence that:

- (1) The MSW facility will be visible and audible from municipal park lands.
- (2) The MSW facility will be visible and audible from recreational river areas within Grenville Park and adjacent to the site.
- (3) Truck traffic hauling MSW to and from and at the MSW facility will be visible and audible from municipal park lands.
- (4) Truck traffic hauling MSW to and from and at the MSW facility will be visible and audible from recreational river areas.
- (5) Odors from the MSW facility, including deodorized odors, will be vented from the facility and will, on occasion, be wind carried over park lands.
- (6) Odors, diesel fumes, litter, leakage from MSW traffic to and from the facility will affect municipal park lands along the routes to and from the facility.
- (7) MSW truck traffic will impact residents including children utilizing and walking to and from municipal park lands located along the MSW truck traffic routes.
- (8) MSW truck traffic to and from the facility will pass directly in front of Veteran's Park, the portions of Grenville Park on Routes 9/32, Nenameseck Square and Reed Memorial Pool and Beauregard Memorial Playground.

Therefore, the Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents with regards to parkland and recreation land and its uses within the Town of Ware finds:

- I. *The solid waste management facility is located directly across the Ware River from Grenville Park, a municipal park of significant historical, scenic landscape, and cultural value designed by renowned landscape architect Arthur A. Shurtleff and registered as a Historic Place; and that the facility immediately abuts Map 24 Lot 14 East Street, 10.34 acres of municipal parkland owned by the Town of Ware.*
- II. *The Ware Board of Health takes specific notice that the 10 plus acres of woods and its purpose for securement in 1922 was particularly referenced in the document entitled " Landscape Ideals Embodied in the Design of Grenville Park Ware, Massachusetts. Being a report by the Landscape Architect to the Board of Park Commissioners" dated January 2, 1923.*
- III. *Map 24, Lot 14 is used by area residents and children (including children with special needs) as a location for nature walking, hiking, and as access to boat and canoe launching, fishing, ice fishing, and ice skating.*
- IV. *The conclusion listed in the Department's " Site Suitability report Modification" dated December 10, 2007 at pages 4 and 11, categorizing Map 24 Lot 14 as "apparently unused" is factually incorrect.*
- V. *MSW trucks will also pass by other parkland of the Town of Ware including Veteran's Park on Main Street, Reed Memorial Pool and Beauregard Memorial Playground on West Main Street, and Nenameseck Square at the corner of Main and South Streets, which will have an adverse impact on the use and enjoyment*

- of municipal parkland.*
- VI. The putrescent nature of municipal solid waste provides a food source and harborage of rodents, insects and other pests of public health significance which contribute to the creation or spread of disease, which will have an adverse impact on the use and enjoyment of municipal parkland.*
 - VII. Other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein, which will have an adverse impact on the use and enjoyment of municipal parkland.*
 - VIII. The transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions, nuisance dust, noise, vibration and the potential for increased vehicle safety concerns, which will have an adverse impact on the use and enjoyment of municipal parkland.*
 - IX. With specific regards to the public health and safety impacts of the transportation of municipal solid waste, the proposed pollution and nuisance reduction strategies advocated by the proponent and his representatives, such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will transverse roads and travel past homes and parkland on trips to the facility and on the return trip out of the Town of Ware, which will have an adverse impact on the use and enjoyment of municipal parkland.*
 - X. The Ware Board of Health takes specific notice that Article 97 of the Constitution of the Commonwealth of Massachusetts states: "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose"*

Based on the above findings, which will have an adverse impact on the use and enjoyment of municipal parklands, and after due deliberations, the Board finds the siting of a waste handling facility receiving municipal solid waste abutting active recreational municipal park land, and the transportation of municipal solid waste and its attending public health nuisances past municipal park land, would have adverse impact on the physical environment of, and on the use and enjoyment of said municipal park land, and is not in accordance with Article 97 of the Massachusetts Constitution.

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

13. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:

1. The concentration and dispersion of emission

2. The number and proximity of sensitive receptors; and
3. The attainment status of the area; as set forth in 310CMR 16.40 (4) (f).

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents finds:

- I. *The applicant failed to identify and consider the concentration and dispersion of emissions from the facility in consideration of the comments and encouragement of Secretary Ian A. Bowles in the September 21, 2007 Certificate of the Secretary of Energy and Environmental Affairs on the Notice of Project Change (NPC Certificate 09/21/07 page 3).*
- II. *The attainment status of the area is classified by the US EPA as "Non-attainment for 8- hour Ozone".*
- III. *The application failed to identify and consider all SSEIS register polluters within a one (1) mile radius and any potential attending cumulative impacts on public health.*
- IV. *It will be necessary for the protection of public health and the environment from fugitive dust and particulate emissions, odors, and windblown litter to impose conditions requiring negative air pressure be maintained within the building and the installation of more advanced odor control mechanisms (see following criterion for additional details) and such imposed conditions will require air quality permit review by MA DEP under 310 CMR 7.00- as referenced in the Department's "Site Suitability Report Modification" dated December 10, 2007, at page 13.*

Therefore, upon due consideration of the above-stated findings, the Ware Board of Health finds it necessary to ensure the facility will not present a threat to public health, safety, or the environment to impose the following conditions :

- 1) The owner/operator shall, prior to obtaining from the Department Authorization to Construct and/or Authorization to Operate Permits, have performed by credentialed and qualified consultants, air quality modeling utilizing both dispersion and photochemical model applications and tools. The modeling shall consider anticipated emissions from the facility, air pollution from emissions of both on-road and off-road vehicles at the facility, as well as all SSEIS register polluters within a one (1) mile radius. The results of such air quality modeling will then serve to assist in the design and implementation of effective control strategies to reduce emissions of harmful air pollutants and to meet required state and federal air quality standards. A complete report, including but not limited to: model results, recommendations, and any reduction strategies identified; shall be submitted to the Ware Board of Health for review, comment, and final approval.

14. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. Noise;
2. Litter;

3. Vermin such as rodents and insects;
4. Odors;
5. Bird hazards to air traffic; and
6. Other nuisance problems, as set forth in 310 CMR 16.40 (4) (g).

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds, with respect to the facility itself:

- I. The putrescible nature of municipal solid waste, and the offal contained therein, provides a food source and harborage of rodents, insects, gulls, and other pests which contribute to the creation or spread of disease.*
- II. Other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein.*
- III. The handling and transfer of municipal solid waste is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, diesel vehicle emissions, nuisance dust, vibration and noise.*

Therefore, upon due consideration of the above-stated findings, the Ware Board of Health finds it necessary to ensure that the facility itself will not present a threat to public health, safety, or the environment to impose the following conditions :

- 1) The facility shall retain a competent, qualified, and licensed exterminator to once weekly inspect and conduct surveillance activity at the facility and on the grounds (including the constructed storm water drainage and retention features) for rodents, vermin and other pests of public health significance. Any pest control method applied shall utilize integrated pest management techniques as well as insecticide and rodenticide resistance control strategies. The exterminator shall issue a monthly, written activity report to the Board of Health detailing the results of inspections and surveillance, and any pest management control utilized during the previous month.
- 2) For the protection of public health and the environment from fugitive dust and particulate emissions , odors, and windblown litter the facility shall install ventilation equipment capable of maintaining negative air pressure, including during period when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air. Exhaust air shall be ventilated thru air filters and/or dust collectors and other equipment necessary to remove particulate matter and malodorous by-products. All filter and equipment shall be maintained in proper working order. Odor control equipment shall be installed that shall automatically neutralize odor in exhaust air as it is ventilated from the facility. The odor control equipment shall include a permanent hard-piped high-pressure system, suspended above the facility's tipping floor with nozzles strategically aimed at fans and exhaust vents. The odor-neutralizing agent shall be applied as a mist in the vicinity of exhaust points from the facility. A scented masking agent is not an odor neutralizing agent. Dust suppression misting equipment shall also be maintained in proper working order.

Ventilation and air-exchanges within the structure shall be of sufficient capacity and exchanges per hour to meet applicable health regulations, including occupational health standards.

- 3) The industrial wastewater holding tank shall be sized, using standard practices of 200% of anticipated daily wastewater generation, and shall include a reasonable surge capacity in the event of fire fighting activity. In the event generally available engineering and/or technical standards are not available to estimate gallons per day generation based on square footage and/or tons per day, the size of the holding tank shall be determined by actual water usage and waste water generation by a similar size and type facility located in Massachusetts.
- 4) The Town of Ware shall establish a "Facility Monitor Account" operated under the direction and control of the Ware Board of Health. The Ware Board of Health shall employ a qualified person to monitor activity and compliance at the facility. Prior to accepting MSW, the owner shall deposit the amount of \$46,400.00 to be placed in the Facility Monitor account to cover the reasonable and anticipated expenses of the Town of Ware Board of Health for such monitoring. On January 1st in every following year thereafter, the owner shall deposit \$46,400.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure.
- 5) The Town of Ware shall establish a "Emergency Responder Facility Impact Account" operated under the joint direction and control of the Ware Board of Health and the Town of Ware Fire Chief. Prior to accepting MSW, the owner shall deposit the initial amount of \$20,000.00 to be placed in the Emergency Responder Facility Impact account to cover the reasonable and anticipated expenses of the Town of Ware for equipping and training first responders for chemical or hazardous emergencies at the facility. On January 1st in every following year thereafter, the owner shall deposit \$5,000.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure for the purpose of continuing education and training of first responders.
- 6) Rapid close door shall be maintained in the down, closed position when not in use by a vehicle entering or exiting the facility.
- 7) All material, including C&D due to the potential of vermin harborage from the MSW operations, shall be removed from the tipping floor at the close of operations daily.
- 8) Any MSW in partial full rail cars within the interior facility shall be in sealed air-tight containers at the close of operations. Any MSW in full rail cars stored on the exterior rail spur shall be sealed at all times in air-tight containers.
- 9) The owner/ operator shall institute a proactive gull control program in compliance with DEP Policy. The operator shall maintain a contract with a qualified professional to administer such a gull control program and the program shall include responding and remediating gull complaints on neighboring properties. A written gull control program shall be submitted to the Ware Board of Health for final approval prior to obtaining "Authorization to Operate" from DEP.
- 10) The owner/operator shall maintain on site and in working order at all times

radiation detection devices. Such devices shall be examined and tested by an independent third party qualified to make such an examination on a monthly bases, with the written results of such testing and examination forwarded to the Ware Board of Health Office. If at any time such examination reveals the inoperability or malfunctioning of the radiation detection devices, such examination, testing, and written reporting shall occur on a weekly bases.

- 11) The Ware Board of Health asserts and re-affirms that all previous ordered conditions as enumerated in their June 9, 2004 final decision for the original site assignment for the property remain in full effect and unchanged by this decision.

Additionally with respect to MSW truck traffic to and from the facility:

- IV. *Based upon the above findings and those findings under criterion number 9 (which are repeated and incorporated by reference herein), the Ware Board of Health finds MSW truck traffic to and from the facility will cause nuisance conditions and constitute a danger to the public health, safety, or the environment.*

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

15. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility, and that the minimum distance between the waste handling area or deposition area and the property boundary for the facility shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility as set forth in 310 CMR 16.40(4) (h) ; *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the waste handling and disposition area of the proposed facility is one hundred (100) feet or more from the property boundary except to the shared property line with the Massachusetts Central Railroad. The Ware Board of Health finds, based on the information contained within the application, the facility was granted a waiver request to this criteria, issued by the Department of Environmental Protection on May 19, 2003. The Ware Board of Health therefore finds the site meets the above-stated criteria.*

16. With regards to the criteria as set forth in 310 CMR 16.40 (4)(i), *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the area adjacent to the site of a proposed facility has not been previously used for solid waste disposal . Therefore, the Ware Board of Health finds the site meets the above-stated criteria.*

17. In regards to the criteria as set forth in 310 CMR 16.40 (4) (j), **Existing Facilities:**

1. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which

will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:

- a. The extent to which the municipality's or region's solid waste will be met by the proposed facility; and
- b. The extent to which the proposed facility incorporates recycling, composting or waste diversion activities; *the Ware Board of Health finds:*
 - I. *There are no active landfills or existing solid waste combustion facilities located in the Town of Ware.*
 - II. *The existing C&D operations meet the municipalities and region's needs. The Ware Board of Health finds the existing C&D operations incorporates waste diversion and recycling and produces beneficial products for re-use.*
 - III. *This site is a proposed modification, not a siting for a new solid waste management facility.*
 - IV. *The facility's proposed MSW operations does not meet the municipalities solid waste or recycling needs.*
 - V. *The facility's proposed MSW operations do not incorporate recycling beyond minimum waste ban compliance.*

Therefore, the Ware Board of Health finds the proposed facility is not entitled to preferential consideration.

18. In regards to the determination of whether a site is suitable and should be assigned as a solid waste management facility shall consider whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department (emphasize added), and whether the proposed facility will mitigate or reduce those sources of pollution or contamination as set forth in 310 CMR 16.40 (4) (k); *the Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds:*

- I. *The Department of Environmental Protection has defined the manner, type and sources by which consideration the impacts of existing sources of pollution or contamination. Such manner is detailed in the Department's Guidance document entitled "Guidance for Conducting Facility Impact Assessment for Solid Waste Facility Site Assignment".*
- II. *The Department's definition and Guidance Document greatly restricts the Board's ability to consider the cumulative impacts on public health of all existing sources of particulate matter, both mobile and stationary under this criteria.*

In light of such restrictions and limitations, the Board finds the site meets the above-stated criteria as solely defined by the Department.

19. With regards to the criteria that the Department and the board of health shall give

preferential consideration to sites located in municipalities not participating in a regional disposal facility. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community participating in a regional disposal facility:

1. The extent to which the proposed facility meets the municipality's and the region's solid waste management needs; and
2. The extent to which the proposed facility incorporates recycling, composting, or waste diversion activities, as set forth in 310 CMR 16.40 (4) (I).

The Ware Board of Health finds:

- I. *The existing C&D operations meet the municipalities and region's needs.*
- II. *The existing C&D operations incorporates waste diversion and recycling and produces beneficial products for re-use.*
- III. *The facility's proposed MSW operations does not meet the municipalities solid waste or recycling needs.*
- IV. *The facility's proposed MSW operations do not incorporate recycling beyond minimum waste ban compliance.*
- V. *The facility's proposed MSW operations will not meet the municipal solid waste recycling needs of the Town of Ware as the proposal does not incorporate any activity that will increase the percentage of consumer sorted recyclables in the Town of Ware.*

The Ware Board of Health finds therefore, the proposed facility is not entitled to preferential consideration.

General Findings:

Marketing Study

- I. *The Ware Board of Health finds that although a marketing analysis/ study was referenced in the application at page 53 of section IV and in testimony from the proponent's consultants (Day 1 page 22; Day 2 page 314), and cited as the bases for testimony received that the majority of trips to the facility would originate from points North and East (Day 4 page 646 and 647) ; upon request no such market analysis or study was produced for review by the Board's traffic consultant for trip distribution analysis or entered into evidence for consideration by the Board of Health.*
- II. *The Board of Health does find that upon request for the above- referenced marketing data, the Board's traffic consultant was provided with a simple centroid radius geographical map. The map was prepared by Green Seal Environmental Inc. and dated 01-28- 08, after commencement of the public hearing.*
- III. *The Ware Board of Health finds the testimony received on a market analysis and/or analyzed data supporting the proponent and representative's assertions that the majority of traffic will originate from points North and East of the facility was not supported by credible evidence.*

Traffic Study

- I. *The Ware Board of Health finds the traffic impact portion of the 2007 Application for Site Assignment Modification and Notice of Project Change was a re-printed copy of the original 2003 application data.*
- II. *The Ware Board of Health finds the original 2003 traffic impact assessment included data, traffic counts, and other information collected in 1995 and 1996 for different projects pending in Ware at that time.*
- III. *The Ware Board of Health finds the 2003 traffic report was based on 20-ton capacity trucks delivering C&D material for an estimated 37.5 daily trips into the facility. The Board finds MSW is delivered in trucks which include to a significant proportion 6- ton capacity garbage packer trucks. Therefore, the Board finds the testimony that MSW loads are expected to reduce existing trips (Day 1, page 33) was not supported by credible evidence.*
- IV. *The Ware Board of Health finds the peer-review report prepared by Howard Stein Hudson and received on December 28, 2007 raised a number of questions and concerns. The Board therefore motioned at the public hearing that a new traffic impact study be performed (Day 1, page 109) .*
- V. *The Ware Board of Health finds the current C&D processing operates at approximately 6% of permitted capacity and heard evidence that actual, current traffic associated the facility averages about 10 vehicles per day (Day 1 page 55).*
- VI. *The Ware Board of Health finds the intersections and routes studied in the 2008 traffic impact study are the same as those listed in the first MEPA submittal of 2003, the 2003 original Site Assignment Application, the MEPA Notice of Project Change of 2007, and the 2007 Site Assignment Modification Application with the exception of driveway counts at the facility itself. The Ware Board of Health also notes that in the December 2007 HSH peer review of the Tighe and Bond study originally submitted in 2003, the intersection studied were found appropriate for the proposed project with the exception of the lack of driveway counts at ABC&D.*
- VII. *The Ware Board of Health finds Ms. Keri Pyke is currently licensed by the Commonwealth of Massachusetts as a civil engineer. The Board also finds Ms. Pyke has obtained national certification as a Professional Transportation Operation Engineer. The Board finds Ms. Pyke is a graduate of Rensselaer PolyTechnical Institute's School of Engineering and has extensive work experience in the field of traffic and transportation. Based on the findings of credentials, education, and work experience, the Board does weighs the opinions and testimony of Ms. Keri Pyke as that of an expert in the field of traffic engineering and transportation impacts.*
- VIII. *The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds that the projected truck routes and volumes as listed in the HSH Traffic Impact Report were determined by standard engineering practices utilizing the best information available at the time of the application submittal and public hearing process.*
- IX. *The Ware Board of Health takes notice that the proponent offered no new traffic study and did not provide testimony from their traffic expert who was present and available at 2/13/08 hearing.*

Testimony with respect to PAYT Program

- I. *The Ware Board of Health finds that the application for site assignment modification as submitted to the Ware Board of Health on August 15, 2007 did not contain any provisions for a recycling drop-off location for use by Ware residents or a pay-as-you-throw program. Nor did the design provide for or address safety concerns of personal vehicles entering or leaving the facility. Traffic counts and considerations listed in the application did not include personal vehicles.*
- II. *The Ware Board of Health finds the proponent communicated with and attended a Town of Ware Board of Selectmen meeting on September 25, 2008 at which he promoted and inferred a PAYT and recycling program for residents was an integral component of the site assignment modification.*
- III. *The Ware Board of Health finds, upon cross-examination conducted on February 11, 2008, the applicant admitted the modification does not provide for PAYT and recycling drop-off for Ware residents. (Day 4 page 664)*
- IV. *The Ware Board of Health also takes notice that the communication of the PAYT program and resident recycling drop-off to the Board of Selectmen was reported by local newspapers (as known by the personal knowledge of Board members and agent) and occurred just prior to the opening of the public comment period to DEP on the proposed modification.*

Testimony of Mr. Garrett Keegan and Mr. John Blaisdell

- I. *Board finds Mr. Garrett Keegan is not licensed as a professional engineer in the Commonwealth of Massachusetts by the Division of Professional Licensure /Board of Registration. The Ware Board of Health finds Mr. Keegan repeatedly referred to himself as a "licensed professional engineer" and did not disclose or reveal to the Board or its agents that his licensure as a professional engineer was from the State of Maine until cross-examination conducted on February 13, 2008.*
- II. *Board finds, based on his testimony, that Mr. Keegan does not hold a college degree in the field of engineering.*
- III. *Board finds, based on his testimony, Mr. Keegan does not have significant work experience in the design of an enclosed MSW transfer station in the State of Massachusetts, rather his work experience is in landfill design and closures.*
- IV. *Based on the above findings of credentials, education, and work experience, the Board does not weigh Mr. Keegan's opinions and testimony as an expert, but rather as a lay person.*
- V. *The Ware Board of Health also finds Mr. Keegan provided conflicting testimony regarding supervision in the preparation of the application and supporting documentation. In pre-filed direct testimony (page 2), Mr. Keegan stated preparation of documentation was provided under his direct supervision. Upon cross-examination on Day 5 of the hearing, Mr. Keegan stated he was supervised by Mr. Gary James of Green Seal Environmental Inc. a licensed professional engineer in the Commonwealth of Massachusetts. The Ware Board of Health finds only one document within the Site Assignment Modification*

Application, a map entitled "Site Plan" contains the seal and signature of Mr. Gary James.

- VI. The Ware Board of Health also finds Mr. John Blaisdell, who testified for the applicant at the public hearing, is not a professional licensed engineer.*
- VII. The Board finds therefore, no expert testimony in support of the application was provided by the applicant during the public hearing process.*

Transfer Station Definition

- I. The Ware Board of Health finds a transfer station is defined at 310 CMR 16.02 : "Transfer Station means a handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility".*
- II. The Ware Board of Health finds the proposed handling of MSW, and the limited recovery of recyclables in the MSW stream as proposed, meets the definition of a transfer station.*
- III. The Board found the testimony to the contrary by both proponent and representatives confusing as to the nature of the proposed modification with regards to MSW operations (Day 2 Page331 and 332, Day 2 Page 353 and 354, Day 4 page701 and 702).*
- IV. The Board of Health does find the existing C&D operations diverts and recovers waste, and produces and manufactures products for beneficial re-use.*

Internal Inconsistencies within the Application

The Ware Board of Health and its agent noted a number of internal inconsistencies within the application, including but not limited to:

- I. Use of rail and truck verses use of rail only for transportation out of the facility. Application Section 1A, page 6 states the transportation of MSW to disposal and/or incinerator facilities will use rail cars or large capacity over-the road trailers. However, application section 3L , page 50 states " All of the MSW will be diverted by rail to an out-of- state permitted facility". Application Section 3H, page 43 lists only handling procedures for rail car loading.*
- II. Acceptance verses rejection of recyclables mixed in MSW. Application Section 3L, page 50 states the facility will not accept recyclable materials mixed into MSW. However, page 7 of the ABC&D WBCP Narrative states if banned recyclable material is found over failure limits, it will be separated or rejected and page 11 states the facility may sort out the banned recyclable material. By page 30 of the Operations and Maintenance Plan, it is stated "Banned items will be removed from the C&D debris and MSW streams to the extent possible."*

Inconsistencies in testimony

The Ware Board of Health and its agent noted a number of inconsistencies within the testimony , including but not limited to:

- I. Mr. Keegan and Mr. Blaisdell contradicted each other with regards to the nature and extent of the inspection and recyclable diversion activities for the MSW*

- stream (Day 2, page 342-343 and 348-351).*
- II. *Mr. Keegan and Mr. Blaisdell provided conflicting and varying testimony on traffic impacts as the hearing progressed (Day 1, page 33, 68, and 77)*
 - III. *Mr. Keegan testimony with regards to his site visit at Grenville Park and his observations of the facility from the Park was not supported by credible evidence and was contrary to the personal knowledge of Board members and the Board's agent of the location of the riverfront within the Park, and its relationship to the facility (Day 3, pages 477-481).*

Decision:

The Ware Board of Health, by unanimous vote based on its findings that the proposed site assignment modification for ABC&D Recycling will not meet the criteria as set forth 310 CMR 16.40 (4)(b) , 310 CMR 16.40(4)(e) and 310 CMR 16.40 (4)(g). The Ware Board of Health denies the site assignment modification of the property located at 198 East Street , Ware, MA 01082, for the reason the siting of this facility modification would constitute a danger to the public health, safety, or the environment.

In the event that this denial of site assignment modification is overturned upon judicial review then the Board finds that the following conditions are necessary to attempt to reduce the dangers to the public health, safety or environment from this facility:

- I. The owner and/ or operator shall maintain all storm water management/ control features and mechanisms as designed and in operational condition. Twice annually, once in Spring and then once again in the Fall , but at times when there is no snow cover which could hinder or hide from view a complete inspection, the owner and/or operator shall have performed a thorough inspection of all drains and drainage ways, catch basins, detention and/or retention basins; perform any maintenance or repairs as needed; and within thirty (30) days submit a written report of the inspection findings and actions taken to the Ware Board of Health and the Ware Conservation Commission.
- II. At any time during the year, the owner and/or operator shall immediately report to the Ware Board of Health and the Ware Conservation Commission any failure of the storm water management system at the facility site to adequately retain and or treat storm water or a significant erosion occurrence at the facility site within 24 hours of the event.
- III. The owner and/or operator shall retain the services of a competent, independent third party professional qualified to conduct an adequate biological evaluation and monitoring program of the Ware River in the immediate vicinity of the solid waste management facility. The program shall at a minimum include, but shall not be limited to, five sample sites- one being immediately upstream from the facility and one other immediately downstream. The water samples shall be analyzed for, but shall not be limited to: Turbidity, nitrogen, phosphorous, dissolved oxygen, BOD, COD, as well as an assessment of the microorganisms in

the water such as zooplankton and phytoplankton. In addition sediment samples shall be taken and analyzed for metals, polychlorinated biphenyls (PCBs), and polynuclear hydrocarbons (PAHs). Such analysis shall be performed by a certified laboratory. In addition, the program shall include the evaluation and monitoring of the vegetative growth and bank stabilization status along the banks and cove of Ware River where it serves as the property line boundary for the facility. Such monitoring shall be performed twice annually for the first five years of the facility's acceptance of municipal solid waste and thereafter once annually provided the initial five year testing results reveal no discernable negative impacts. Monitoring and evaluation results, including laboratory reports and chain of custody documentation, shall be provided to the Ware Board of Health and Ware Conservation Commission in written format within thirty (30) days of completion twice annually or once annual as set forth in the terms above.

- IV. The owner/operator shall, prior to obtaining from the Department Authorization to Construct and/or Authorization to Operate Permits, have performed by credentialed and qualified consultants air quality modeling utilizing both dispersion and photochemical model application and tools. The modeling shall consider anticipated emissions from the facility, air pollution from emissions of both on-road and off-road vehicles at the facility, as well as all SSEIS register polluters within a one (1) mile radius. The results of such air quality modeling will then serve to assist in the design and implementation of effective control strategies to reduce emissions of harmful air pollutants and to meet required state and federal air quality standards. A complete report, including but not limited to: model results, recommendations, and any reduction strategies identified; shall be submitted to the Ware Board of Health for review, comment, and final approval.
- V. The facility shall retain a competent, qualified, and licensed exterminator to once weekly inspect and conduct surveillance activity at the facility and on the grounds (including the constructed storm water drainage and retention features) for rodents, vermin and other pests of public health significance. Any pest control method applied shall utilize integrated pest management techniques as well as insecticide and rodenticide resistance control strategies. The exterminator shall issue a monthly, written activity report to the Board of Health detailing the results of inspections and surveillance, and any pest management control utilized during the previous month.
- VI. For the protection of public health and the environment from fugitive dust and particulate emissions, odors, and windblown litter the facility shall install ventilation equipment capable of maintaining negative air pressure, including during period when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air. Exhaust air shall be ventilated thru air filters and/or dust collectors and other equipment necessary to remove particulate matter and malodorous by-products. All filter and equipment shall be maintained in proper working order. Odor control equipment shall be installed that shall automatically neutralize odor in exhaust air as it is ventilated from the facility. The odor control equipment shall include a permanent hard-piped high-pressure system, suspended above the facility's tipping floor with nozzles strategically aimed at fans and exhaust vents. The odor-

neutralizing agent shall be applied as a mist in the vicinity of exhaust points from the facility. A scented masking agent is not an odor neutralizing agent. Dust suppression misting equipment shall also be maintained in proper working order. Ventilation and air-exchanges within the structure shall be of sufficient capacity and exchanges per hour to meet applicable health regulations, including occupational health standards.

- VII. The industrial wastewater holding tank shall be sized, using standard practices of 200% of anticipated daily wastewater generation, and shall include a reasonable surge capacity in the event of fire fighting activity. In the event generally available engineering and/or technical standards are not available to estimate gallons per day generation based on square footage and/or tons per day, the size of the holding tank shall be determined by actual water usage and waste water generation by a similar size and type facility located in Massachusetts.
- VIII. The Town of Ware shall establish a "Facility Monitor Account" operated under the direction and control of the Ware Board of Health. The Ware Board of Health shall employ a qualified person to monitor activity and compliance at the facility. Prior to accepting MSW, the owner shall deposit the amount of \$46,400.00 to be placed in the Facility Monitor account to cover the reasonable and anticipated expenses of the Town of Ware Board of Health for such monitoring. On January 1st in every following year thereafter, the owner shall deposit \$46,400.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure.
- IX. The Town of Ware shall establish a "Emergency Responder Facility Impact Account" operated under the joint direction and control of the Ware Board of Health and the Town of Ware Fire Chief. Prior to accepting MSW, the owner shall deposit the initial amount of \$20,000.00 to be placed in the Emergency Responder Facility Impact account to cover the reasonable and anticipated expenses of the Town of Ware for equipping and training first responders for chemical or hazardous emergencies at the facility. On January 1st in every following year thereafter, the owner shall deposit \$5,000.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure for the purpose of continuing education and training of first responders.
- X. Rapid close door shall be maintained in the down, closed position when not in use by a vehicle entering or existing the facility.
- XI. All material, including C&D due to the potential of vermin harborage from the MSW operations, shall be removed from the tipping floor at the close of operations daily.
- XII. Any MSW in partial full rail cars within the interior facility shall be in sealed air-tight containers at the close of operations. Any MSW in full rail cars stored on the exterior rail spur shall be sealed at all times in air-tight containers.
- XIII. The owner/ operator shall institute a proactive gull control program in compliance with DEP Policy. The operator shall maintain a contract with a qualified professional to administer such a gull control program and the program shall include responding and remediating gull complaints on neighboring properties. A written gull control program shall be submitted to the Ware Board

of Health for final approval prior to obtaining "Authorization to Operate" from DEP.

- XIV. The owner/operator shall maintain on site and in working order at all times radiation detection devices. Such devices shall be examined and tested by an independent third party qualified to make such an examination on a monthly bases, with the written results of such testing and examination forwarded to the Ware Board of Health Office. If at any time such examination reveals the inoperability or malfunctioning of the radiation detection devices, such examination, testing, and written reporting shall occur on a weekly bases.
- XV. The Ware Board of Health asserts and re-affirms that all previous ordered conditions as enumerated in their June 9, 2004 final decision for the original site assignment for the property remain in full effect.
- XVI. As testified to in the public hearing, the owner/operator (and any future owner/operator of the facility shall maintain a "hotline" by which resident can report nuisance condition resulting from the operation directly to facility, and the facility shall respond, investigate, and remediate the nuisance. A written list of complaints received and corresponding action taken by the facility (including dates and times as well as name and of complainant if known) shall be forwarded to the Ware Board of Health on a monthly bases.
- XVII. The owner/operator shall have performed daily during operations the sweeping/ cleaning of all driveways, access roads, and paved areas of the facility. In addition, as weather permits, the owner/operator shall have performed at their own expense, or incur the costs of the Town of Ware performing, the sweeping and cleaning of Town of Ware roadways used leading to and exiting from the facility within 2.5 miles. The manner and frequency shall be determined by the Town of Ware Department of Public Works Superintendent.

Signed this day, February 25, 2008


Joseph J. Ciejka


Michael Juda


Donna Rucki

Any person aggrieved by this decision may, within 30 days of publication of the notice of decision, appeal under the provisions of MGL C. 30A, section 14.

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS

February 25, 2008

Then personally appeared the above named members of the Ware Board of Health, known to me personally, and acknowledged the foregoing instrument to be their free act and deed before me.



Margaret D. Sorel, Notary Public
Commission Expires: 09-12-2008

EXHIBIT 10



Dec 8, - Dec 14 2005 • Volume 31, Number 12



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The real dirt on the Greenwood Street landfill

A lawsuit questions where the money's going

By Noah Schaffer

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It looked for a minute there as if the heated controversy over the re-use of the Greenwood Street landfill was over for good. Well, it's not. A lawsuit is questioning the handling of money coming into the project.

Before it was under way, the project was put under close scrutiny on several fronts. One was the quiet way in which Worcester officials helped Chelmsford-based Mass. Environmental Associates principal Pat Hannon navigate the political hurdles facing the re-opening of a long-closed dump. Another was the city administration's desultory opening of bids to other companies, followed by an apparent rush to designate Hannon as the official contractor. Finally, there were the repeated reductions in the original promise that the project would generate something like \$6 million in fees to the city.



The Greenwood Street landfill.

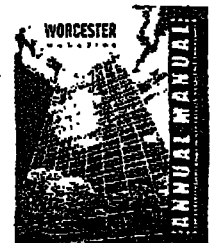
Now there's another kind of controversy in the form of a lawsuit between MEA and Casella Systems Inc., which competed for the project and is now working with MEA. The lawsuit charges that MEA may be diverting proceeds to cover Pat Hannon's significant personal debts. A court has ordered changes in the handling of that money.

Meanwhile, MEA fires back that Casella violated its contract by asking to meet with City Manager Michael O'Brien. According to his office, the meeting never took place.

As many questions as there were when the City of Worcester selected Mass. Environmental Associates to dump and then re-seal the Greenwood Street landfill, more arose when it was revealed that MEA owner Pat Hannon had IRS troubles concerning a piece of property he owned. MEA was obligated to provide a financial guarantee that the work would be done. Enter the more-financially-secure Casella Systems Inc., a larger, Vermont-based firm and one of the losing bidders for the project. In May, Casella issued a press release announcing that it was part of a "joint venture" with MEA.

Now, Suffolk Superior Court documents show that the business arrangement became strained after the state refused to allow "fines and residuals," a certain class of construction and demolition material, to be brought into the landfill under the first phase of the project. Handling that stuff is very lucrative, so the ban cut deeply into the potential profitability of the project. In fact, as the suit shows, the project has yet to make money, even as MEA owner Hannon struggles with his personal financial problems.

The IRS has placed more than \$5 million in tax liens against Hannon's holdings. Also, a court recently put an \$800,000 attachment on a Newton property he owns. "Hannon's precarious financial position suggests one obvious reason for the refusal to account for the



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funds and the refusal to place the funds in a controlled account: The funds are being used to pay or secure personal debts or personal debts of MEA," reads the Casella complaint.

In a written affidavit, Hannon responds that the "project is losing money now and for the foreseeable future The soil market is depressed and tipping fees are more than 40% lower than reasonably anticipated when the project started. The monthly expenses exceed the monthly income generated to date."

Hannon also states that he is "not insolvent and I am able to resolve the IRS issues described in the complaint."

At the time of the affidavit, court records show, Casella had contributed more than \$2 million to the project, and made monthly \$72,000 management fee payments to MEA. The company also secured a \$3.45 million bond; however, it complains that the proceeds were being deposited directly into MEA's account instead of going to News of Worcester, an LLC set up for the project. The complaint said that MEA refused to account for \$1.46 million in funds that Casella should have received "for selling space at the landfill project that the LLC was created to complete."

In his affidavit, Hannon says that Worcester Public Works Commissioner Robert Moylan refused to entertain the prospect of having Casella be named on the license for the site. According to Hannon, Moylan said, "We don't want another Brockton or Southbridge situation," referring to problems in two other Casella projects. "I'm not hearing any good things about Casella." (MEA has had other problems as well; earlier this year, it was fined \$46,000 and settled with the state Department of Environmental Protection over the use of contaminated soils to cap a landfill in Wilmington.)

The city and DEP's refusal to allow dumping fines and residuals at the site and to list Casella on the license created the "resulting disintegration of the operating agreement," writes Hannon. He did not return several calls seeking comment.

Hannon also claims in the lawsuit that "Casella attempted to disparage MEA's reputation to the city [of Worcester] and get the city to terminate the contract with MEA. Most recently Casella contacted MEA's longtime customer, Charter [Environmental Inc. of Wilmington], threatening to 'blow the job up.'" The suit alleges that by asking for a meeting with Worcester's city manager, Casella violated the contract. Both sides are seeking arbitration for their complaints.

MEA has something of an alarming warning: that if the project is unable to continue, it will result in "incomplete investigation and remediation of explosive levels of gas at the property line currently under investigation by MEA's consultants along with the DEP."

Moylan explains, "There is a location that, from time to time, shows concentrations of gas above a certain threshold. The conventional thinking has been that, for lack of a better term, it is a hot spot."

According to DEP spokesman Edmund Coletta, "We were aware of it going back six to eight weeks. They had moderately exceeded their explosion limit from some tests. There's no imminent hazard, no imminent danger."

One of the court documents is a statement from Moylan that MEA has performed in "an exemplary manner ... [MEA has] maintained full neighborhood support and has satisfied the terms of the agreement. We look forward to your continued work with the city."

Suffolk Superior Court Judge Ralph Gants ordered a partial preliminary injunction commanding that MEA deposit revenues into the LLC, which lists only Casella as a principal. Gants ruled that while the contract might not explicitly state that the tipping fees go to the LLC, it "makes no sense" otherwise, since the LLC has to pay MEA tipping fees greater than \$9 per ton as well as the city its \$1.25 per ton royalty fee.

"MEA appears to have been depositing tipping fees earned ... into an MEA account MEA has not adequately responded to the request by Casella for documents and information ... involving invoices and bank documents reflecting where the tipping fees were deposited and how they have been spent," wrote Gants. "MEA's failure to cooperate with [Casella's] efforts to learn the status of its tipping fees is troubling, especially in light of the apparent financial difficulties faced by MEA."

Gants found that Casella is "likely to prevail" in the arbitration, but he refused to order that Casella approve any monies spent on the project, saying that MEA "has the exclusive responsibility to manage [the landfill] and owes important obligations to the city ... for the

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management and capping of the landfill."

Gants also ordered that no money from the fees can be spent by MEA except on behalf of the landfill. The court also ordered that MEA release to Casella full accounting and financial records for the project.

Moylan says that he's "not concerned" about the fighting between Casella and MEA, or whether the project is profitable. "The concern we have is that we're going to get \$1.25 per ton from every ton that comes in, and then, when they get in excess of \$12 a ton, we share a higher premium," he says. "If [Hannon] can also make money while doing that, I'm a happy guy, but if he can't, that's for him to deal with. And they have gotten over \$12 a ton from time to time. So they send us a schedule each month and we have that checked, and their tip fees vary from vendor to vendor and in some cases they have gotten over \$12 a ton and it is nice."

As for whether he bashed Casella in a conversation with Hannon, Moylan says his simple wish was that MEA remain the only license holder for the landfill project, so that any of the other firms that had applied for the job wouldn't come back and demand another shot at it. "It has nothing to do with Casella or their reputation, which as far as I'm concerned, they've got a good reputation with regulators," says Moylan. o

Noah Schaffer may be reached at nschaffer@worcestermag.com.

EXHIBIT 11

DRAFT

ABC&D RECYCLING, INC.

Facility Impact Assessment

August 2007

Prepared for:

ABC&D Recycling, Inc.
198 EAST STREET
WARE, MA 01082



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Fax: (508) 888-1506

28 Route 6A, Sandwich, MA 02563

Facility overview ABC&D proposes to modify a large solid waste handling facility at 198 East Street, Ware, Massachusetts. The existing facility is a 750-ton per day (tpd) processing and handling facility that accepts construction and demolition (C&D) waste. The modification planned is to accept municipal solid waste (MSW) in addition, without increasing the total volume of waste accepted. MSW will be tipped and transferred within the existing building into airtight/leak-tight rail cars or large over the road trailers, which will be transported off-site to disposal and/or incineration facilities.

The facility has been developed using state-of-the-art BMPs to minimize potential impacts to the site and surrounding environment. The proposed improvements of this site, will include segregation of C&D and MSW on the tipping floor, installation of quick closing fabric overhead doors, and addition of an odor control essential oil mixture to the existing water mist dust suppression system.

ABC&D intends to develop and operate a solid waste handling facility with limited processing activities including handling and packaging of MSW. C&D materials will continue to be separately processed by shredding, screening and sorting as appropriate to recover useful materials. Limited separation of unacceptable material from the MSW will occur in order to comply with applicable Massachusetts waste bans (i.e. cardboard, aluminum cans, etc.).

The entire interior of the building will be utilized for the tipping, consolidation, stockpiling and loading of incoming MSW and C&D material.

The following is a partial listing of the major proposed facility BMPs:

1. Modify an existing approximate 21,600-square foot steel building to allow separate tipping and handling of C&D and MSW with indoor rail integration to allow for the operation to be conducted entirely indoors,
 2. Maintain the on-site infrastructure to properly control/treat stormwater, noise, odor and traffic congestion,
 3. Replace the existing truck access overhead doors with quick closing fabric overhead doors to allow the doors to remain closed except for truck entry and exit, preventing release of fugitive odors during operations.
 4. Institute proper inspection and handling protocols to reduce the potential for on and/or off site nuisance conditions,
 5. Incorporate an indoor odor control modification to the existing dust suppression system to assist in the reduction of fugitive odors,
 6. Institute proper controls to mitigate on/off-site environmental impacts.
-

EXHIBIT 12

Volume: 2
Pages: 128-379

T O W N O F W A R E
BOARD OF HEALTH

PUBLIC HEARING
Pursuant to 310 CMR 16.20

SITE SUITABILITY O'RILEY FAMILY TRUST
(Owner)

ABC&D RECYCLING, INC.
(Operator).

BEFORE:
WAYNE M. LEBLANC, HEARING OFFICER

DAY TWO
January 30, 2008
7 p.m.
Ware Town Hall

Reporter: Kathleen M. Bradley, RPR

BAY STATE REPORTING AGENCY
76 MILL STREET (At Park Avenue)
WORCESTER, MASSACHUSETTS 01603
(508) 753-4121

A P P E A R A N C E S:

FOR THE TOWN:

CHRISTOPHER, HAYS, WOJCIK & MAVRICOS
370 Main Street
Worcester, Massachusetts 01608
BY: DAVID A. WOJCIK, ESQ.
WILLIAM W. HAYS, ESQ.

FOR THE APPLICANT:

DONOHUE, HYLAND & DONOHUE, P.C.
1707 Northampton Street
Holyoke, Massachusetts 01040
BY: MATTHEW L. DONOHUE, ESQ.

BOARD OF HEALTH MEMBERS:

JOSEPH J. CIEJKA, CHAIRMAN
MICHAEL JUDA, VICE CHAIRMAN
DONNA RUCKI, Member

JUDY METCALF, Director of Quabbin Health
District

GREEN SEAL ENVIRONMENTAL, INC. . . .

I N D E X

**Continued Direct Examination of Green Seal
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MR. BLAISDELL
BY MR. DONOHUE: 194**

**CROSS-EXAMINATION OF GREEN SEAL
ENVIRONMENTAL, INC.**

BY MR. WOJCIK: 273

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1 what the percentages are.

2 (Conference between all
3 Applicant Representatives)

4 MR. BLAISDELL: Okay. The
5 proponent has allowed us to share with you
6 that the C&D operations are more profitable
7 than MSW operations.

8 MR. WOJCIK: Okay. But my
9 question was what percentage going forward
10 is going to be C&D in your view and what
11 percentage MSW?

12 MR. BLAISDELL: No, that we
13 don't know.

14 Q. Okay. And this facility with respect
15 to MSW is going to be a transfer station,
16 isn't it?

17 (All Answers by Mr. Keegan)

18 A. No, a processing and handling
19 facility.

20 Q. A processing and handling facility.

21 A. As defined by the DEP.

22 Q. I believe I have a memorandum that
23 was submitted by Counsel for the proponent.

24 At the conclusion it's seeking

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T O W N O F W A R E
B O A R D O F H E A L T H

PUBLIC HEARING
Pursuant to 310 CMR 16.20

SITE SUITABILITY O'RILEY FAMILY TRUST
(Owner)

ABC&D RECYCLING, INC.
(Operator)

BEFORE:
WAYNE M. LEBLANC, HEARING OFFICER

DAY FOUR
January 11, 2008
6 p.m.
Ware Town Hall
Ware, Massachusetts

Reporter: Kathleen M. Bradley, RPR

BAY STATE REPORTING AGENCY
76 MILL STREET (At Park Avenue)
WORCESTER, MASSACHUSETTS 01603
(508) 753-4121

A P P E A R A N C E S:**FOR THE TOWN:**

CHRISTOPHER, HAYS, WOJCIK & MAVRICOS
370 Main Street
Worcester, Massachusetts 01608
BY: DAVID A. WOJCIK, ESQ.
NICOLE B. CAPRIOLI, ESQ.

FOR THE APPLICANT:

DONOHUE, HYLAND & DONOHUE, P.C.
1707 Northampton Street
Holyoke, Massachusetts 01040
BY: MATTHEW L. DONOHUE, ESQ.

BOARD OF HEALTH MEMBERS:

JOSEPH J. CIEJKA, CHAIRMAN
MICHAEL JUDA, VICE CHAIRMAN
DONNA RUCKI, Member

JUDY METCALF, Director of Quabbin Health
District

GREEN SEAL ENVIRONMENTAL, INC.
JOHN BLAISDELL, PROJECT MANAGER

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Discussion of BOH Offer of Proof List
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Further Assessment of Technical Fees
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W I T N E S S E SAPPLICANT WITNESSES

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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RICHARD C. O'RILEY

MR. DONOHUE: 621 702

MR. WOJCIK: 645 715

MS. RUCKI: 690
(BOARD OF HEALTH)

WITNESSES OF BOARD OF HEALTH

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
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JOHN E. CARROLL, JR.

MR. WOJCIK: 741

MR. DONOHUE: 761

HEARING OFFICER: 783

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
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GILBERT ST. GEORGE-SOREL

MS. CAPRIOLI: 787

MR. DONOHUE: 804

HEARING OFFICER:

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
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DAVID KOPACZ

MR. WOJCIK: 818

MR. DONOHUE: 832

HEARING OFFICER: 848

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
1			
2	JOHN DESMOND		
3	MS. CAPRIOLI:	850	
4	MR. DONOHUE:		858
5	HEARING OFFICER:	873	
6			
7	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
8	THOMAS COLOUMBE		
9	FIRE CHIEF		
10	MS. CAPRIOLI:	875	
11	MR. DONOHUE:		899
12	HEARING OFFICER:	906	
13			
14	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
15	PAUL HILLS		
16	COMMUNITY DEVELOPMENT		
17	MS. CAPRIOLI:	907	
18	MR. DONOHUE:		917
19	HEARING OFFICER:	932	
20			
21			
22			
23			
24			

1 facility?

2 A. Yes, sir.

3 Q. What was the nature of the Fire Chief
4 coming out to your facility?

5 A. The Fire Chief came out to make sure
6 that we had all the proper procedures in
7 place, proper equipment, proper
8 connections.

9 He checked the sprinkler
10 panels. And we also took the Fire
11 Department one evening and ran them through
12 the entire facility so that they would know
13 what would happen in case there was a fire.
14 And they've all been briefed on that.

15 Q. There's been some talk with regard to
16 your intent with regard to this project.
17 And I'm making specific reference to the
18 recycling program for the residents of the
19 Town of Ware.

20 Can you explain what your hope
21 is with regard to your facility in the
22 future?

23 A. Well, my future plans are to get the
24 MSW operation up and running to provide

1 funding for the recycling center. I have a
2 great idea to do it, and I think I can put
3 the whole package together. And I need the
4 funding.

5 The Town tried it years ago,
6 they didn't have the funding, they didn't
7 have the personnel, but I have the facility
8 and I can do that.

9 Q. Is that part of this initial Site
10 Suitability application that you put
11 forward?

12 A. No, it's not. It's future plans.

13 Q. But is it part of this Site
14 Suitability modification application that
15 you put forward, is Recycling a component
16 of that?

17 A. Recycling is a component, but on a
18 next Committee process or next procedure.
19 MSW has to be approved first so we can
20 carry out everything that Recycling
21 requires.

22 MR. DONOHUE: Sorry, I'm just
23 going to go through my notes a little bit.

24 Q. Mr. O'Riley, has anybody ever

1 get paid for, correct?

2 A. Yes, sir.

3 Q. As opposed to the general MSW, the
4 general MSW you process and then it goes
5 into a railcar or it goes into an
6 over-the-road truck and now you have to pay
7 for that.

8 Instead of getting paid for it,
9 you're actually paying to have that taken
10 away, correct?

11 A. Yes.

12 Q. So there is motivation for you to go
13 through this MSW stream?

14 A. Very much so.

15 Q. So when you say that you don't know
16 how much recycling you're going to be able
17 to do, it would kind of depend on how
18 quickly the loads are coming in and how
19 much material you're taking in?

20 A. That's correct.

21 Q. So if one load comes in per hour, you
22 know, at 20 tons, you might not be able to be
23 very thorough with regard to how much
24 recycling you can pull from that load?